

Staff Summary for June 11-12, 2025

Executive Session**Today's Item****Information** ☐**Action** ☒

Executive session includes four standing topics:

- (A) Pending litigation to which the Commission is a party
- (B) Possible litigation involving the Commission
- (C) Staffing
- (D) Deliberation and action on license and permit items

Summary of Previous/Future Actions (N/A)**Background**

During the public portion of its meeting, the Commission will call a recess and reconvene in a closed session pursuant to the authority of California Government Code Section 11126, subdivisions (a), (c)(3) and (e)(1). The Commission will address four items in closed session: Pending litigation, possible litigation, staffing, and license and permit items.

(A) Pending Litigation to Which the Commission is a Party

See agenda for a complete list of pending civil litigation to which the Commission is a party, at the time the agenda was made public. At any meeting, during executive session, the Commission may take action related to pending litigation.

(B) Possible Litigation Involving the Commission**(C) Staffing**

For details about staffing, see the executive director's report under Agenda Item 3(A) for today's meeting.

(D) Deliberation and Action on License and Permit Items

- I. Consider the accusation in FGC Case No. 25ALJ03-FGC, regarding revocation of Ronald Ghera's commercial fishing license and Dungeness crab vessel permit.

The Department filed an accusation (Exhibit 1) with the Commission on March 4, 2025 and served the accusation on Ronald Ghera (Respondent); the accusation asks that the Commission revoke Ghera's Dungeness crab vessel permit. Mr. Ghera must file a notice of defense with the Commission within 15 days in order to request a hearing or object to the accusation. The Commission has not received a notice of defense from Mr. Ghera.

On May 20, 2025, the Department submitted a letter to the Commission with supporting records attached (Exhibit 2). The letter requests that the Commission revoke Mr. Ghera's commercial fishing license and Dungeness crab vessel

Staff Summary for June 11-12, 2025

permit consistent with the accusation, summarizes the violations in the accusation, and provides evidence of the violations.

- II. Consider the proposed decision in FGC Case No. 24ALJ16-FGC, regarding suspension of Odysseus Richcreek's commercial fishing license.

The Department filed an accusation with the Commission; the accusation requests the Commission suspend Odysseus Richcreek's (Respondent) commercial fishing license for one year. Respondent filed a notice of defense with the Commission requesting a hearing.

Commission staff referred this case to the California Office of Administrative Hearings (OAH) and OAH conducted a hearing. After the hearing, OAH submitted a proposed decision (Exhibit 3) to the Commission. The proposed decision finds that the Department proved that the Respondent took undersized Dungeness crab and the undersized crab exceeded one percent of his entire catch in violation of the law, determined a suspension of Respondent's license is warranted, and determined a 30-day suspension is adequate.

On May 27, 2025, the Department submitted a letter to the Commission requesting the Commission suspend the license for one year (exhibit 4); the letter points to a Commission precedential decision as support for a one-year suspension.

- III. Consider the proposed decision in FGC Case No. 24ALJ35-FGC, regarding suspension of Jerry Lynn Willett's commercial fishing license.

The Department filed an accusation with the Commission; the accusation requests the Commission suspend Jerry Lynn Willett's (Respondent) commercial fishing license for two years. Respondent filed a notice of defense with the Commission requesting a hearing.

Commission staff referred this case to the California Office of Administrative Hearings (OAH) and OAH conducted a hearing. After the hearing, OAH submitted a proposed decision (Exhibit 5) to the Commission. The proposed decision finds that the Department proved the Respondent committed the charged violations and that Respondent has not presented sufficient evidence of mitigating circumstances or rehabilitation to justify a lesser disciplinary action than the requested suspension.

- IV. Consider the proposed decision in FGC Case No. 24ALJ36-FGC, regarding suspension of David James Bitts's Dungeness crab vessel permit.

The Department filed an accusation with the Commission; the accusation requests the Commission suspend David James Bitts's (Respondent) Dungeness crab vessel permit for three months. Respondent filed a notice of defense with the Commission requesting a hearing.

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Commission staff referred this case to the California Office of Administrative Hearings (OAH) and OAH conducted a hearing. After the hearing, OAH submitted a proposed decision (Exhibit 6) to the Commission. The proposed decision finds that Respondent possessed an unlawful amount of undersized crab, but determined that the Department had an obligation to prove Respondent possessed the crab for an unreasonable amount of time.

The Department submitted a letter asking the Commission to reject the proposed decision and “suspend Bitts’ Dungeness Crab Vessel Permit for 3 months with the suspension to begin at the start of the season.” (Exhibit 7)

David Bitts, through legal counsel, submitted a letter advocating for the Commission to adopt the proposed decision. (Exhibit 8)

- V. Consider the proposed decision in FGC Case No. 24ALJ08-FGC, regarding revocation of Christopher Miller’s commercial fishing license and lobster operator permit.

The Department filed an accusation with the Commission; the accusation requests the Commission revoke Christopher Miller’s (Respondent) commercial fishing license and lobster operator permit. Respondent filed a notice of defense with the Commission requesting a hearing.

Commission staff referred this case to the California Office of Administrative Hearings (OAH) and OAH conducted a hearing. After the hearing, OAH submitted a proposed decision (Exhibit 9) to the Commission. The proposed decision finds that the Department proved Respondent committed the charged violations and the evidence supports revoking Respondent’s license.

Significant Public Comments (N/A)**Recommendation**

Commission staff: Hear argument from any of the parties that wish to address the Commission in open session, then deliberate in closed session on the five items under agenda item D.

Exhibits

1. [Ronald Ghera accusation, received March 4, 2025.](#)
2. [Letter from the Department regarding Ronald Ghera](#)
3. [Odysseus Richcreek proposed decision regarding agency case number 24ALJ16-FGC](#)
4. [Letter from the Department regarding Odysseus Richcreek](#)
5. [Jerry Lynn Willett proposed decision regarding agency case number 24ALJ35-FGC](#)

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6. [David James Bitts proposed decision regarding agency case number 24ALJ36-FGC](#)
7. [Letter from the Department regarding David James Bitts](#)
8. [Letter from Matthew Emrick, Law Offices of Matthew Emrick, for Respondent David Bitts](#)
9. [Christopher Miller proposed decision regarding agency case number 24ALJ08-FGC](#)

Motion

Options will be discussed during closed session regarding agency case numbers 25ALJ03-FGC, 24ALJ16-FGC, 24ALJ35-FGC, 24ALJ36-FGC, and 24ALJ08-FGC.

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OFFICE OF ADMINISTRATIVE HEARINGS
BEFORE THE FISH AND GAME COMMISSION

In the Matter of the Accusation Against)
)
) ACCUSATION
)
RONALD WALTER GHERA)
Respondent.)
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)
)
)

PARTIES

1. Nathaniel Arnold (“Complainant”) is the Chief of the Law Enforcement Division for the Department of Fish and Wildlife (“Department”) and brings this Accusation solely in his official capacity.
2. On or about March 10, 2023, the Department renewed a Commercial Fishing License (“License”) issued to Respondent, RONALD WALTER GHERA (“GHERA”). The license has been in full force and effect at all times relevant in this Accusation.
3. On or about March 10, 2023, the Department renewed a Dungeness Crab Vessel Permit (“Permit”), number CT0118-T6, issued to the vessel number 38266, named “Gerry B,” owned by Respondent GHERA. The permit has been in full force and effect at all times relevant in this Accusation.

In the Matter of the Accusation Against Ronald Walter Ghera

JURISDICTION

This Accusation is brought before the Fish and Game Commission
 (“Commission”) under the authority of the following laws.

4. Fish and Game Code section 7857(b)(2) (“Section 7857(b)(2)”), which states:

(b) The commission, after notice and opportunity for hearing, may suspend, revoke, or cancel commercial fishing privileges for a period of time to be determined by the commission for the following reasons:

...
 (2) A violation of this code, the terms of the permit or other entitlement, or the regulations adopted pursuant thereto, by the licensee, permittee, person holding the entitlement, or his or her agent, servant, employee, or person acting under the licensee’s, permittee’s, or entitled person’s direction or control.

5. Fish and Game Code section 9004 (“Section 9004”), which states:

Every trap shall be raised, cleaned, serviced, and emptied at intervals, not to exceed 96 hours, weather conditions at sea permitting, and no trap shall be abandoned in the waters of this state.

6. Fish and Game Code section 8276(d) (“Section 8276(d)”), which states:

(d) All Dungeness crab traps shall be removed from state waters by 11:59 p.m. on the last day of the applicable Dungeness crab season.

7. Fish and Game Code section 9006(b) (“Section 9006(b)”), which states in part:

Every trap used to take finfish or crustaceans shall be marked with a buoy. Each buoy shall be marked to identify the operator as follows:

(b) For a trap used to take Dungeness crab or hagfish, the commercial fishing license identification number only.

8. Fish and Game Code section 86 (“Section 86”), which states:

“Take” means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

9. California Code of Regulations, Title 14, section 132.1(a) (“Section 132.1(a)”), which states:

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Dungeness Crab Trap Tags. Every Dungeness crab trap aboard a permitted Dungeness crab vessel and fished in California waters shall have a valid tag attached to the Dungeness crab trap.

10. California Code of Regulations, Title 14, section 132.1(b) (“Section 132.1(b)”), which states:

Dungeness Crab Biennial Buoy Tags. As required by Section 9005 of the Fish and Game Code, every Dungeness crab trap placed in waters of the state to take Dungeness crab for commercial purposes shall be marked with a buoy. Each Dungeness crab trap on board or fished from a permitted Dungeness crab vessel is required to have a biennial buoy tag affixed to the main buoy, known hereafter as buoy tag, pursuant to the provisions of Section 8276.5(a)(1)(D) of the Fish and Game Code. The buoy tag shall contain the department-assigned Dungeness crab vessel permit number and trap tier number. All of the buoy tags allocated to each Dungeness crab vessel permit as described in this Section and Section 8276.5(a)(1) of the Fish and Game Code shall be purchased by the permitholder biennially at the same time a Dungeness crab vessel permit is purchased or the permit shall be void pursuant to Section 8276.5(a)(3)(A) of the Fish and Game Code. The nonrefundable fee for each buoy tag is \$5.00.

11. California Code of Regulations, Title 14, section 132.8(g)(1) (“Section 132.8(g)(1)”), which states:

(g) Mandatory Data Reporting Requirements

(1) Fishing Activity Reporting Requirement: When participating in the California commercial Dungeness crab fishery, all vessels must submit bi-weekly reports that include permit number, current Fishing Zone, depth range, and number of traps deployed at the time of reporting. Reports shall be submitted on or before the first and 16th day of each month. At the conclusion of the Fishing Season the number of lost traps shall also be reported on the final bi-weekly report that is submitted to the department. All reports shall be submitted via email or text to Whalesafefisheries@wildlife.ca.gov.

FIRST CAUSE FOR DISCIPLINE

12. Respondent GHERA is subject to disciplinary action under Section 7857(b)(2) in that GHERA violated Section 9004, a violation for which the Permit may be revoked. The circumstances are as follows:

In the Matter of the Accusation Against Ronald Walter Ghera

1 a. From on or about July 5, 2024, to July 16, 2024, an 11-day period,
2 Respondent GHERA fished with at least 4 Dungeness crab traps without raising,
3 cleaning, servicing, and emptying them at intervals not to exceed 96 hours, in
4 violation of Section 9004.

5 **SECOND**
6 **CAUSE FOR DISCIPLINE**

7 13. Respondent GHERA is subject to disciplinary action under Section 7857(b) in that
8 GHERA violated Section 8276(d), a violation for which the Permit may be
9 revoked. The circumstances are as follows:

10 a. On or about July 16, 2024, Respondent GHERA fished with at least 36
11 Dungeness crab traps 1 day after the season had closed on July 15, 2024, in
12 violation of Section 8276(d).

13 **THIRD**
14 **CAUSE FOR DISCIPLINE**

15 14. Respondent GHERA is subject to disciplinary action under Section 7857(b) in that
16 GHERA violated Section 8276(d), a violation for which the Permit may be
17 revoked. The circumstances are as follows:

18 a. On or about July 17, 2024, Respondent GHERA fished with at least 18
19 Dungeness crab traps 2 days after the season had closed on July 15, 2024, in
20 violation of Section 8276(d).

21 **FOURTH**
22 **CAUSE FOR DISCIPLINE**

23 15. Respondent GHERA is subject to disciplinary action under Section 7857(b) in that
24 GHERA violated Section 8276(d), a violation for which the Permit may be
25 revoked. The circumstances are as follows:

In the Matter of the Accusation Against Ronald Walter Ghera

1 a. On or about July 18, 2024, Respondent GHERA fished with at least 20
2 Dungeness crab traps 3 days after the season had closed on July 15, 2024, in
3 violation of Section 8276(d).

4 **FIFTH**
5 **CAUSE FOR DISCIPLINE**

6 16. Respondent GHERA is subject to disciplinary action under Section 7857(b) in that
7 GHERA violated Section 132.1(a), a violation for which the Permit may be
8 revoked. The circumstances are as follows:

9 b. Between on or about July 5, 2024 and July 18, 2024, Respondent GHERA
10 fished with around 74 Dungeness crab traps without crab trap tags, in violation of
11 Section 132.1(a).

12 **SIXTH**
13 **CAUSE FOR DISCIPLINE**

14 17. Respondent GHERA is subject to disciplinary action under Section 7857(b) in that
15 GHERA violated Section 132.8(g)(1), a violation for which the Permit may be
16 revoked. The circumstances are as follows:

17 c. From on or about December 1, 2023, to July 24, 2024, Respondent
18 GHERA fished for Dungeness crab, without submitting any of the 16 bi-weekly
19 reports required, in violation of Section 132.8(g)(1).

20 **SEVENTH**
21 **CAUSE FOR DISCIPLINE**

22 18. Respondent GHERA is subject to disciplinary action under Section 7857(b) in that
23 GHERA violated Section 8276(d), a violation for which the Permit may be
24 revoked. The circumstances are as follows:

a. On or about August 25, 2023, Respondent GHERA fished with 94 Dungeness crab traps 42 days after the season had closed on July 15, 2023, in violation of Section 8276(d).

EIGHTH CAUSE FOR DISCIPLINE

19. Respondent GHERA is subject to disciplinary action under Section 7857(b) in that GHERA violated Section 9006(b), a violation for which the Permit may be revoked. The circumstances are as follows:

a. On or about September 23, 2023, Respondent GHERA fished with at least 5 Dungeness crab traps without buoys that identified the operator, in violation of Section 9006(b).

b. On or about October 21, 2023, Respondent GHERA fished with at least 13 Dungeness crab traps without buoys that identified the operator, in violation of Section 9006(b).

c. On or about October 30, 2023, Respondent GHERA fished with at least 18 Dungeness crab traps without buoys that identified the operator, in violation of Section 9006(b).

NINTH CAUSE FOR DISCIPLINE

20. Respondent GHERA is subject to disciplinary action under Section 7857(b)(2) in that GHERA violated Section 132.1(a), a violation for which the Permit may be revoked. The circumstances are as follows:

a. On or about September 23, 2023, Respondent GHERA fished with at least 5 Dungeness crab traps without crab trap tags, in violation of Section 132.1(a).

b. On or about October 21, 2023, Respondent GHERA fished with at least 13 Dungeness crab traps without crab trap tags, in violation of Section 132.1(a).

c. On or about October 30, 2023, Respondent GHERA fished with at least 18 Dungeness crab traps without crab trap tags, in violation of Section 132.1(a).

**TENTH
CAUSE FOR DISCIPLINE**

21. Respondent GHERA is subject to disciplinary action under Section 7857(b)(2) in that GHERA violated Section 9004, a violation for which the Permit may be revoked. The circumstances are as follows:

a. On or about August 25, 2023, Respondent GHERA fished with at least 94 Dungeness crab traps without raising, cleaning, servicing, and emptying them at intervals not to exceed 96 hours, in violation of Section 9004. A portion of the 94 traps remained in the water past August 25, 2023. Department wardens removed 5 on September 23, 2023; 13 on October 21, 2023; and 18 on October 30, 2023.

**ELEVENTH
CAUSE FOR DISCIPLINE**

22. Respondent GHERA is subject to disciplinary action under Section 7857(b)(2) in that GHERA violated Section 132.8(g)(1), a violation for which the Permit may be revoked. The circumstances are as follows:

a. On or about May 15, 2023, Respondent GHERA failed to submit a bi-weekly report for the reporting period between May 1 and May 15, in violation of Section 132.8(g)(1).

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**TWELFTH
CAUSE FOR DISCIPLINE**

23. Respondent GHERA is subject to disciplinary action under Section 7857(b)(2) in that GHERA violated Section 132.8(g)(1), a violation for which the Permit may be revoked. The circumstances are as follows:

a. On or about July 15, 2023, Respondent GHERA failed to submit a final bi-weekly report for the reporting period between July 1 and July 15, in violation of Section 132.8(g)(1).

PRAYER

WHEREFORE, Complainant prays that a hearing be held on the charges and that thereafter the Fish and Game Commission issues a decision:

- (1) Revoking GHERA's Commercial Fishing License;
- (2) Revoking GHERA's Dungeness Vessel Permit, number CT0118-T6; and
- (3) Taking such other and further action as may be deemed just and proper.

Dated this 20 day of February 2025

NATHANIEL ARNOLD
COMPLAINANT
CHIEF, LAW ENFORCEMENT DIVISION

In the Matter of the Accusation Against Ronald Walter Ghera

VERIFICATION

I, Nathaniel Arnold, the undersigned, say:

I am a party to this action; the above document is true of my own knowledge, except as to the matters that are stated on my information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the above is true and correct and that this declaration was executed on February 20, 2025, at 715 P St., Sacramento, CA 95814.

Date: 2/20/2025



Nathaniel Arnold
Declarant



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 P.O. Box 944209
 Sacramento, CA 94244-2090
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



May 20, 2025

California Fish and Game Commission
 715 P Street
 16th Floor
 Sacramento, CA 95814

Subject: Revocation of Ronald Walter Ghera's Commercial Fishing License and Dungeness Vessel Permit (CT0118-T6)

Dear Commissioners:

Pursuant to Government Code, section 11520, subdivision (a) ("Section 11520(a)"),¹ the Department is requesting that the Fish and Game Commission ("Commission") revoke Ronald Walter Ghera's commercial fishing license and Dungeness crab vessel permit, number CT0118-T6, at its June 11-12, 2025 meeting, without holding a hearing on the matter.

The Commission may revoke Mr. Ghera's commercial fishing license and Dungeness crab vessel permit at its June 11-12 meeting because Mr. Ghera has waived his right to a hearing. On March 10, 2025, the Department served Mr. Ghera with the accusation via certified mail. Mr. Ghera declined to file a Notice of Defense requesting a hearing within 15 days of receiving the accusation, i.e., by March 25, 2025, as required pursuant to Government Code section 11506, subdivision (a)(1)², and still has not filed a Notice of Defense as of the date of this letter, 71 days later. Accordingly, Mr. Ghera has waived his right to a hearing. Instead, the commission may suspend his commercial fishing license and Dungeness crab vessel permit based upon his express admissions or other evidence at its June 11-12 meeting.

As described in the Accusation and the attached exhibits submitted as uncontroverted evidence of the violations, Mr. Ghera has committed multiple violations of the Fish and Game Code, and regulations adopted pursuant to it. These violations include:

1. 2023 Case

- From on or about December 1, 2023, to July 24, 2024, Mr. Ghera fished for Dungeness crab without submitting any bi-weekly fishing reports, in violation of Title 14 of the California Code of Regulations section 132.8(g)(1) ("Section 132.8(g)(1)").³

¹ Section 11520 (a) states in part, "If the respondent either fails to file a notice of defense, or, as applicable, notice of participation, or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent..."

² Government Code, section 11506, subdivision (a)(1) states, "Within 15 days after service of the accusation or District Statement of Reduction in Force the respondent may file with the agency a notice of defense, or, as applicable, notice of participation, in which the respondent may: (1) Request a hearing."

³ Section 132.8(g)(1) states in part, "Fishing Activity Reporting Requirement: When participating in the California commercial Dungeness crab fishery, all vessels must submit bi-weekly reports that include permit number, current

- On or about August 25, 2023, Mr. Ghera fished with 94 Dungeness traps 42 days after the season closed on July 15, 2023, in violation of Fish and Game Code Section 8276(d). (“Section 8276(d)”)⁴ Additionally, Mr. Ghera failed to raise, clean, service, and empty the 94 traps at intervals not to exceed 96 hours, in violation of Fish and Game Code section 9004 (“Section 9004”).⁵ Wardens removed Mr. Ghera’s traps from the ocean as they found them, on August 25, 2023; September 23, 2023; October 21, 2023; and October 30, 2023.
- On or about September 23, 2023, Mr. Ghera fished with at least five Dungeness traps without buoys that identified the operator, in violation of Fish and Game Code section 9006(b) (“Section 9006(b)”)⁶ Additionally, the traps used by Mr. Ghera did not have any crab trap tags, in violation of Title 14 of the California Code of Regulations section 132.1(a) (“Section 132.1(a)”)⁷.
- On or about October 21, 2023, Mr. Ghera fished with at least 13 Dungeness traps without buoys that identified the operator, in violation of Section 9006(b).
- On October 30, 2023, Mr. Ghera fished with at least 18 Dungeness traps without buoys that identified the operator, in violation of Section 9006(b).
- On or about May 15, 2023, Mr. Ghera failed to submit a bi-weekly report for the reporting period between May 1 and May 15, 2023, in violation of Section 132.8(g)(1). Additionally, Mr. Ghera failed to submit a bi-weekly report for the reporting period between July 1 and July 15, also in violation of Section 132.8(g)(1). After looking into Mr. Ghera’s fishing activity reports for the 2023-2024 season, Wardens found that Mr. Ghera failed to submit two required reports in the 2022-2023 season.

2. 2024 Case

- On or about July 16, 2024, Mr. Ghera fished with at least four Dungeness crab traps without raising, cleaning, servicing, and emptying them at intervals not to exceed 96 hours, in violation of Section 9004. On July 5, 2024, Department Wardens put 96-hour notification notes into four different traps being used by Mr. Ghera. The 96-hour notification note tells the fisherman to contact the Department when they pull the traps to ensure they are in compliance with Section 9004. On July 16, 2024, a day after the commercial Dungeness season closed, Wardens had not received a call from Mr. Ghera, and they pulled his traps from the ocean.
- On or about July 16, 2024, Mr. Ghera fished with at least 36 Dungeness traps after the commercial Dungeness season closed on July 15, 2024, in violation of Section 8276(d).

Fishing Zone, depth range, and number of traps deployed at the time of reporting. Reports shall be submitted on or before the first and 16th day of each month...”

⁴ Section 8276(d) states in part, “All Dungeness crab traps shall be removed from state waters by 11:59 p.m. on the last day of the applicable Dungeness crab season.”

⁵ Section 9004 states, “Every trap shall be raised, cleaned, serviced, and emptied at intervals, not to exceed 96 hours, weather conditions at sea permitting, and no trap shall be abandoned in the waters of this state.”

⁶ Section 9006 states, “Every trap used to take finfish or crustaceans shall be marked with a buoy. Each buoy shall be marked to identify the operator as follows:

(b) For a trap used to take Dungeness crab or hagfish, the commercial fishing license identification number only.

⁷ Section 132.1(a) states, “Dungeness Crab Trap Tags. Every Dungeness crab trap aboard a permitted Dungeness crab vessel and fished in California waters shall have a valid tag attached to the Dungeness crab trap.”

- On or about July 17, 2024, Mr. Ghera fished with at least 18 Dungeness traps after the commercial Dungeness season closed on July 15, 2024, in violation of Section 8276(d).
- On or about July 18, 2024, Mr. Ghera fished with at least 20 Dungeness traps after the commercial Dungeness season closed on July 15, 2024, in violation of Section 8276(d).
- Between on or about July 5, 2024, and July 18, 2024, Mr. Ghera fished with around 74 Dungeness traps without crab trap tags, in violation of Section 132.1(a).

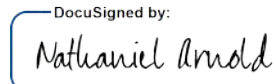
In sum, Mr. Ghera's abandoned around 100 Dungeness crab traps in the Pacific Ocean two seasons in a row, necessitating the removal of the traps by Department Wardens. Not only did Mr. Ghera put migrating wildlife at risk of entanglements, he also put the Dungeness fishery at risk by abandoning his traps. Department Wardens contacted Mr. Ghera numerous times, only to have him ignore their requests and tell them he was working on removing the traps.

Additionally, Mr. Ghera failed to comply with reporting and buoy and trap marking requirements, obstructing the Department's effort to track where gear was in the ocean and analyze entanglements as they occur.

Because Mr. Ghera failed to submit a Notice of Defense requesting a hearing, and his numerous, serious, and repeated violations unnecessarily put marine resources at risk, wasted Department law enforcement resources by requiring officers to retrieve his traps, and showed he cannot be trusted to follow commercial fishing laws, the Department respectfully requests that the Commission revoke Mr. Ghera's commercial fishing license and Dungeness crab vessel permit at its June 11-12, 2025 meeting without holding a hearing.

If you have any questions, please do not hesitate to contact Staff Counsel Cooper Wilce by telephone number at (916) 241-7894 or e-mail at Cooper.Wilce@wildlife.ca.gov.

Sincerely,

DocuSigned by:

AA968532644A4EB...
NATHANIEL ARNOLD
Chief, Law Enforcement Division

Cc: Ronald Walter Ghera

ACCUSATION

COOPER WILCE (SBN 344611)
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Attorney for Complainant

OFFICE OF ADMINISTRATIVE HEARINGS
BEFORE THE FISH AND GAME COMMISSION

In the Matter of the Accusation Against)
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PARTIES

1. Nathaniel Arnold (“Complainant”) is the Chief of the Law Enforcement Division for the Department of Fish and Wildlife (“Department”) and brings this Accusation solely in his official capacity.
2. On or about March 10, 2023, the Department renewed a Commercial Fishing License (“License”) issued to Respondent, RONALD WALTER GHERA (“GHERA”). The license has been in full force and effect at all times relevant in this Accusation.
3. On or about March 10, 2023, the Department renewed a Dungeness Crab Vessel Permit (“Permit”), number CT0118-T6, issued to the vessel number 38266, named “Gerry B,” owned by Respondent GHERA. The permit has been in full force and effect at all times relevant in this Accusation.

In the Matter of the Accusation Against Ronald Walter Ghera

JURISDICTION

This Accusation is brought before the Fish and Game Commission
("Commission") under the authority of the following laws.

4. Fish and Game Code section 7857(b)(2) ("Section 7857(b)(2)", which states:

(b) The commission, after notice and opportunity for hearing, may suspend, revoke, or cancel commercial fishing privileges for a period of time to be determined by the commission for the following reasons:

...
(2) A violation of this code, the terms of the permit or other entitlement, or the regulations adopted pursuant thereto, by the licensee, permittee, person holding the entitlement, or his or her agent, servant, employee, or person acting under the licensee's, permittee's, or entitled person's direction or control.

5. Fish and Game Code section 9004 ("Section 9004"), which states:

Every trap shall be raised, cleaned, serviced, and emptied at intervals, not to exceed 96 hours, weather conditions at sea permitting, and no trap shall be abandoned in the waters of this state.

6. Fish and Game Code section 8276(d) ("Section 8276(d)", which states:

(d) All Dungeness crab traps shall be removed from state waters by 11:59 p.m. on the last day of the applicable Dungeness crab season.

7. Fish and Game Code section 9006(b) ("Section 9006(b)", which states in part:

Every trap used to take finfish or crustaceans shall be marked with a buoy. Each buoy shall be marked to identify the operator as follows:

(b) For a trap used to take Dungeness crab or hagfish, the commercial fishing license identification number only.

8. Fish and Game Code section 86 ("Section 86"), which states:

"Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

9. California Code of Regulations, Title 14, section 132.1(a) ("Section 132.1(a)", which states:

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In the Matter of the Accusation Against Ronald Walter Ghera

Dungeness Crab Trap Tags. Every Dungeness crab trap aboard a permitted Dungeness crab vessel and fished in California waters shall have a valid tag attached to the Dungeness crab trap.

10. California Code of Regulations, Title 14, section 132.1(b) (“Section 132.1(b)”), which states:

Dungeness Crab Biennial Buoy Tags. As required by Section 9005 of the Fish and Game Code, every Dungeness crab trap placed in waters of the state to take Dungeness crab for commercial purposes shall be marked with a buoy. Each Dungeness crab trap on board or fished from a permitted Dungeness crab vessel is required to have a biennial buoy tag affixed to the main buoy, known hereafter as buoy tag, pursuant to the provisions of Section 8276.5(a)(1)(D) of the Fish and Game Code. The buoy tag shall contain the department-assigned Dungeness crab vessel permit number and trap tier number. All of the buoy tags allocated to each Dungeness crab vessel permit as described in this Section and Section 8276.5(a)(1) of the Fish and Game Code shall be purchased by the permitholder biennially at the same time a Dungeness crab vessel permit is purchased or the permit shall be void pursuant to Section 8276.5(a)(3)(A) of the Fish and Game Code. The nonrefundable fee for each buoy tag is \$5.00.

11. California Code of Regulations, Title 14, section 132.8(g)(1) (“Section 132.8(g)(1)”), which states:

(g) Mandatory Data Reporting Requirements

(1) Fishing Activity Reporting Requirement: When participating in the California commercial Dungeness crab fishery, all vessels must submit bi-weekly reports that include permit number, current Fishing Zone, depth range, and number of traps deployed at the time of reporting. Reports shall be submitted on or before the first and 16th day of each month. At the conclusion of the Fishing Season the number of lost traps shall also be reported on the final bi-weekly report that is submitted to the department. All reports shall be submitted via email or text to Whalesafefisheries@wildlife.ca.gov.

FIRST CAUSE FOR DISCIPLINE

12. Respondent GHERA is subject to disciplinary action under Section 7857(b)(2) in that GHERA violated Section 9004, a violation for which the Permit may be revoked. The circumstances are as follows:

In the Matter of the Accusation Against Ronald Walter Ghera

1 a. From on or about July 5, 2024, to July 16, 2024, an 11-day period,
2 Respondent GHERA fished with at least 4 Dungeness crab traps without raising,
3 cleaning, servicing, and emptying them at intervals not to exceed 96 hours, in
4 violation of Section 9004.

5 **SECOND**
6 **CAUSE FOR DISCIPLINE**

7 13. Respondent GHERA is subject to disciplinary action under Section 7857(b) in that
8 GHERA violated Section 8276(d), a violation for which the Permit may be
9 revoked. The circumstances are as follows:

10 a. On or about July 16, 2024, Respondent GHERA fished with at least 36
11 Dungeness crab traps 1 day after the season had closed on July 15, 2024, in
12 violation of Section 8276(d).

13 **THIRD**
14 **CAUSE FOR DISCIPLINE**

15 14. Respondent GHERA is subject to disciplinary action under Section 7857(b) in that
16 GHERA violated Section 8276(d), a violation for which the Permit may be
17 revoked. The circumstances are as follows:

18 a. On or about July 17, 2024, Respondent GHERA fished with at least 18
19 Dungeness crab traps 2 days after the season had closed on July 15, 2024, in
20 violation of Section 8276(d).

21 **FOURTH**
22 **CAUSE FOR DISCIPLINE**

23 15. Respondent GHERA is subject to disciplinary action under Section 7857(b) in that
24 GHERA violated Section 8276(d), a violation for which the Permit may be
25 revoked. The circumstances are as follows:

a. On or about July 18, 2024, Respondent GHERA fished with at least 20 Dungeness crab traps 3 days after the season had closed on July 15, 2024, in violation of Section 8276(d).

**FIFTH
CAUSE FOR DISCIPLINE**

16. Respondent GHERA is subject to disciplinary action under Section 7857(b) in that GHERA violated Section 132.1(a), a violation for which the Permit may be revoked. The circumstances are as follows:

b. Between on or about July 5, 2024 and July 18, 2024, Respondent GHERA fished with around 74 Dungeness crab traps without crab trap tags, in violation of Section 132.1(a).

**SIXTH
CAUSE FOR DISCIPLINE**

17. Respondent GHERA is subject to disciplinary action under Section 7857(b) in that GHERA violated Section 132.8(g)(1), a violation for which the Permit may be revoked. The circumstances are as follows:

c. From on or about December 1, 2023, to July 24, 2024, Respondent GHERA fished for Dungeness crab, without submitting any of the 16 bi-weekly reports required, in violation of Section 132.8(g)(1).

**SEVENTH
CAUSE FOR DISCIPLINE**

18. Respondent GHERA is subject to disciplinary action under Section 7857(b) in that GHERA violated Section 8276(d), a violation for which the Permit may be revoked. The circumstances are as follows:

a. On or about August 25, 2023, Respondent GHERA fished with 94 Dungeness crab traps 42 days after the season had closed on July 15, 2023, in violation of Section 8276(d).

EIGHTH CAUSE FOR DISCIPLINE

19. Respondent GHERA is subject to disciplinary action under Section 7857(b) in that GHERA violated Section 9006(b), a violation for which the Permit may be revoked. The circumstances are as follows:

a. On or about September 23, 2023, Respondent GHERA fished with at least 5 Dungeness crab traps without buoys that identified the operator, in violation of Section 9006(b).

b. On or about October 21, 2023, Respondent GHERA fished with at least 13 Dungeness crab traps without buoys that identified the operator, in violation of Section 9006(b).

c. On or about October 30, 2023, Respondent GHERA fished with at least 18 Dungeness crab traps without buoys that identified the operator, in violation of Section 9006(b).

NINTH CAUSE FOR DISCIPLINE

20. Respondent GHERA is subject to disciplinary action under Section 7857(b)(2) in that GHERA violated Section 132.1(a), a violation for which the Permit may be revoked. The circumstances are as follows:

a. On or about September 23, 2023, Respondent GHERA fished with at least 5 Dungeness crab traps without crab trap tags, in violation of Section 132.1(a).

b. On or about October 21, 2023, Respondent GHERA fished with at least 13 Dungeness crab traps without crab trap tags, in violation of Section 132.1(a).

c. On or about October 30, 2023, Respondent GHERA fished with at least 18 Dungeness crab traps without crab trap tags, in violation of Section 132.1(a).

TENTH CAUSE FOR DISCIPLINE

21. Respondent GHERA is subject to disciplinary action under Section 7857(b)(2) in that GHERA violated Section 9004, a violation for which the Permit may be revoked. The circumstances are as follows:

a. On or about August 25, 2023, Respondent GHERA fished with at least 94 Dungeness crab traps without raising, cleaning, servicing, and emptying them at intervals not to exceed 96 hours, in violation of Section 9004. A portion of the 94 traps remained in the water past August 25, 2023. Department wardens removed 5 on September 23, 2023; 13 on October 21, 2023; and 18 on October 30, 2023.

ELEVENTH CAUSE FOR DISCIPLINE

22. Respondent GHERA is subject to disciplinary action under Section 7857(b)(2) in that GHERA violated Section 132.8(g)(1), a violation for which the Permit may be revoked. The circumstances are as follows:

a. On or about May 15, 2023, Respondent GHERA failed to submit a bi-weekly report for the reporting period between May 1 and May 15, in violation of Section 132.8(g)(1).

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**TWELFTH
CAUSE FOR DISCIPLINE**

23. Respondent GHERA is subject to disciplinary action under Section 7857(b)(2) in that GHERA violated Section 132.8(g)(1), a violation for which the Permit may be revoked. The circumstances are as follows:

a. On or about July 15, 2023, Respondent GHERA failed to submit a final bi-weekly report for the reporting period between July 1 and July 15, in violation of Section 132.8(g)(1).

PRAYER

WHEREFORE, Complainant prays that a hearing be held on the charges and that thereafter the Fish and Game Commission issues a decision:

- (1) Revoking GHERA's Commercial Fishing License;
- (2) Revoking GHERA's Dungeness Vessel Permit, number CT0118-T6; and
- (3) Taking such other and further action as may be deemed just and proper.

Dated this 20 day of February 2025

DocuSigned by:

Nathaniel Arnold

70A968532644A4EB...

NATHANIEL ARNOLD
COMPLAINANT
CHIEF, LAW ENFORCEMENT DIVISION

In the Matter of the Accusation Against Ronald Walter Ghera


VERIFICATION

I, Nathaniel Arnold, the undersigned, say:

I am a party to this action; the above document is true of my own knowledge, except as to the matters that are stated on my information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the above is true and correct and that this declaration was executed on February 20, 2025, at 715 P St., Sacramento, CA 95814.

Date: 2/20/2025

DocuSigned by:

AA968532644A4EB...

Nathaniel Arnold
Declarant

In the Matter of the Accusation Against Ronald Walter Ghera

1 *In the Matter of the Accusation Against RONALD WALTER GHERA*

2
3 **PROOF OF SERVICE**

4 I am a resident of the State of California, over the age of eighteen years, and not a party to
5 the within action. My business address is California Department of Fish and Wildlife, 715 P
6 Street, Sacramento, California 95814. On March 4, 2025, I served the within documents described
7 as:

- 8 **1. Accusation;**
9 **2. Notice of Defense (Under Govt. Code § 11506) (2 copies);**
10 **3. Statement to Respondent; and**
11 **4. California Government Code §§ 1150.7, 1107.6 and 11507.7 (2 copies).**

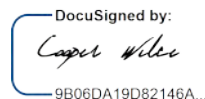
12 _____ (BY ELECTRONIC SERVICE) by transmitting via electronic service the documents listed
13 above to the e-mail address set forth below on this date at _____. The transmission was
14 reported as complete and without error.

15 X (BY CERTIFIED MAIL – RETURN RECIEPT REQUESTED) I am familiar with my
16 employer's collection and processing of correspondence for mailing with the United States
17 Postal Service and that each day mail is deposited with the United States Postal Service that
18 same day in the ordinary course of business. On the date set forth above, I served the
19 aforementioned documents on the party in said action by placing a true copy thereof
20 enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing
21 on this date, following ordinary business practices in Sacramento, California addressed as
22 set forth below.

23 **RONALD GHERA**
24 **Fortuna, CA 95540**

25 **CERTIFIED MAIL NO.: 7022 2410 0001 5210 2230**

26 I declare under penalty of perjury under the laws of the State of California that the foregoing
27 is true and correct. Executed on March 4, 2025, at Sacramento, California.

28 DocuSigned by:
Cooper Wilce
9B06DA19D82146A...

Cooper Wilce

USPS Tracking

Tracking Number:

70222410000152102230



Copy



Add to Informed Delivery

Latest Update

Your item was delivered to an individual at the address at 4:26 pm on March 10, 2025 in FORTUNA, CA 95540.

Get More Out of USPS Tracking:



USPS Tracking Plus[®]



Delivered

Delivered, Left with Individual

FORTUNA, CA 95540

March 10, 2025, 4:26 pm

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USPS Tracking Plus[®]



Product Information



2023 Case Report

Citation Number AD20643443

DEPARTMENT OF FISH AND WILDLIFE ☒ MISDEMEANOR
NOTICE TO APPEAR FG-900 ☐ Traffic ☒ Nontraffic

AD20643443

Date of Violation 10/30/23 Time 1315 ☐ AM ☒ PM Day of Week MON Case No.
 Name (First, Middle, Last) RONALD, WALTER, GIERA ☐ Owner's Responsibility (Veh. Code, § 40001)

Address [REDACTED]

City FORTUNA State CA ZIP Code 95540 Phone Number [REDACTED]

Driver Lic. No. [REDACTED] State CA Class ☐ Yes ☐ No Age 44 Birth Date 5/29/1979

Sex [REDACTED] Hair [REDACTED] Eyes [REDACTED] Height [REDACTED] Weight [REDACTED] Race [REDACTED] Other Description [REDACTED]

Veh. Lic No. or VIN FIV GERRY B State ☐ COMMERCIAL VEHICLE (Veh. Code, § 15210(b))

Yr. of Veh. [REDACTED] Make [REDACTED] Model [REDACTED] Body Style [REDACTED] Color [REDACTED] ☐ HAZARDOUS MATERIAL (Veh. Code, § 353)

Evidence of Financial Responsibility [REDACTED]

Registered Owner or Lessee [REDACTED] ☐ Same as Driver

Address [REDACTED] ☐ Same as Driver

City [REDACTED] State [REDACTED] ZIP Code [REDACTED]

Correctable Violation (Veh. Code, § 40610) ☐ Booking Required Misdemeanor or Infraction (Circle)

Yes	No	Code and Section	Description	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	FGC 8276	REMOVE TRAPS	(M) I
<input type="checkbox"/>	<input checked="" type="checkbox"/>	FGC 9004	Abandoned TRAPS	(M) I
<input type="checkbox"/>	<input checked="" type="checkbox"/>	FGC 9006(b)	Commercial Fish ID #	(M) I
<input type="checkbox"/>	<input checked="" type="checkbox"/>	CCR T14 132.1(a)	TRAP TAKES RESC	(M) I

Speed Approx. [REDACTED] P.F./Max Spd. [REDACTED] Veh. Lmt. [REDACTED] GPS Lat. [REDACTED] Long [REDACTED]

Location of Violation(s) at OFFSHORE TABLE BLUFF HUMBOLDT City/County of Occurrence Cal TIP: Yes (No)

Evidence Seized (36) DUNGENESS CRAB TRAPS

☐ Violations not committed in my presence, declared on information and belief.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.

Date 10/30/23 Arresting or Citing Officer T. NORRIS Badge No. 882

Date [REDACTED] Name of Arresting Officer, if different from Citing Officer [REDACTED] Badge No. [REDACTED]

WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME AND PLACE INDICATED BELOW. ☒ Signature FORMAL COMPLAINT

WHEN: ON OR BEFORE THIS DATE: TBD Time: ☐ AM ☐ PM

WHAT TO DO: FOLLOW THE INSTRUCTIONS ON THE REVERSE

Name Of Court HUMBOLDT CO. SUPERIOR

WHERE: Section or Division, Room No. CRIMINAL

Street Address 825 5TH ST. EUREKA 95501

Phone Number 707-445-7256 Court 12100

☐ Juvenile ☐ To be notified ☐ You may arrange with the clerk to appear at a night session of the court.



AD20643443

COURT COPY

CCR T14 132.1(a)(1)



Date/Time of Incident/Occurrence 10/30/2023 0:00	City/County/Judicial Jurisdiction HUMBOLDT COUNTY/HUMBOLDT COUNTY SUPERIOR		
Type of Arrest FORMAL COMPLAINT	Type of Contact COMPLAINT	RMS Case Number: FW-2312-0453	
Type of Report COMMERCIAL FISHING			
Location/Subject/Incident Name F/V GERRY B FGC 9004		Arresting/Case Officer NORRIS, TAYLOR M 0882	

SUSPECT INFORMATION

Name Suspect (First, Middle, Last) RONALD WALTER GHERA	Involvement Type SUSPECT	Sex M	Date of Birth 05/29/1979	Citation Number AD20643443
Suspect Address (Street, Apt., City, State, Zip Code) [REDACTED] FORTUNA, CA, 95540				Home Phone [REDACTED]
Identification Type DL: CA [REDACTED]	Suspect Description			
	General: [REDACTED]	Hair: [REDACTED]	Eyes: [REDACTED]	Race: [REDACTED]

OFFENSES AND CHARGES

9004 FGC TRAP RAISING INTERVALS
132.1(a) T14 DUNGENESS CRAB TRAP TAGS, BIENNIAL BUOY TAGS, AND TRAP AND BUOY TAG ALLOCATIONS - DUNGENESS CRAB TRAP TAGS
9006(b) FGC TRAPS USED TO TAKE FINFISH OR CRUSTACEANS MARKED WITH A BUOY
132.8(g)(1) T14 DUNGENESS CRAB BI-WEEKLY REPORTING REQUIREMENTS
FGC 8276(d) - Failure to remove traps at end of season

Preparer's Name and Badge Number NORRIS, TAYLOR M 0882	Date 12/19/2023	Reviewer's Name CHASE, BRENT A 0678	Date 1/4/2024
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Date/Time of Incident/Occurrence 10/30/2023 0:00	City/County/Judicial Jurisdiction HUMBOLDT COUNTY/HUMBOLDT COUNTY SUPERIOR		
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CASE SYNOPSIS

See narrative.

PROPERTY/EVIDENCE

Status: HELD	Evidence Photographed? YES
Description: (36) DUNGENESS CRAB TRAPS	

NARRATIVE

Background

The California Department of Fish and Wildlife (CDFW) heavily regulates the commercial Dungeness crab fishery. Commercial Dungeness crab gear poses a risk to marine life entanglement and CDFW manages the commercial crab fishery to reduce risk of entanglement. One of the management strategies is restricting when commercial Dungeness crab traps can be deployed in the ocean to reduce conflict with migrating marine life. Abandoned traps pose a greater risk to several marine mammal species of concern as well as the marine life it traps.

Each Dungeness crab trap sits on the ocean floor and is attached to a vertical line that is attached to a floating buoy. The buoy is used by fisherman to locate and retrieve the trap. CDFW requires all traps to be removed at the end of the season for that area (**FGC 8276(d)**). CDFW also requires commercial Dungeness crab fisherman to raise, clean, service, and empty their traps at intervals not to exceed 96 hours, and no trap shall be abandoned in the waters of this state (**FGC 9004**). Commercial Dungeness crab fisherman are required to mark their buoys with the current operators commercial fishing license number, or "L number" (**FGC 9006(b)**). Commercial Dungeness crab traps are required to be tagged with both a buoy tag and a trap tag (**CCR T14 132.1**). The buoy tag is provided by CDFW and has information such as commercial Dungeness crab permit number, the size of the permit, the number of the specific tag in the series, and the years it is valid. The trap tag is provided by the permit vessel owner and is required to have the owners telephone number, and if the tag is missing for any reason, the trap shall be deemed not in compliance and not permitted to take Dungeness crab for commercial purposes (**CCR T14 132.1(a)**).

The commercial Dungeness crab fishery has undergone significant changes due to new legislation, changing ocean conditions, and more recently, risk of marine life entanglement. In order to minimize marine life entanglements, RAMP (Risk Assessment and Mitigation Program) was developed and codified in regulation on November 1, 2020.

Under the Risk Assessment and Mitigation Program, there is a Fishing Activity Reporting Requirement specifying that a vessel participating in the California commercial Dungeness crab fishery must submit a report on or before the first and 16th day of each month. The bi-weekly report provides important fishing dynamics information to CDFW. Specifically, the amount and set location of commercial trap gear. The report includes the location, depth, and number of traps per fishing vessel to ensure that the Department is getting a current snapshot of all fleet activity at that point in time. Having updated information on all fleet activity is necessary for the Department to assess the level of entanglement risk as it relates to fishing effort. It also helps inform the need or effectiveness of management actions, such as gear reductions or closures. At the conclusion of the Fishing Season the number of lost traps shall also be reported on the final bi-weekly report that is submitted to the Department. This required information on lost traps also helps inform the lost gear recovery effort and helps to minimize risk of marine life entanglements in the off-season.

California Code of Regulations Title 14 132.8(g)(1) states when participating in the California commercial Dungeness crab fishery, all vessels must submit bi-weekly reports that include permit number, current Fishing Zone, depth range, and number of traps deployed at the time of reporting. Reports shall be submitted on or before the first and 16th day of each month. At the conclusion of the Fishing Season the number of lost traps shall also be reported on the final

Preparer's Name and Badge Number NORRIS, TAYLOR M 0882	Date 12/19/2023	Reviewer's Name CHASE, BRENT A 0678	Date 1/4/2024
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Date/Time of Incident/Occurrence 10/30/2023 0:00		City/County/Judicial Jurisdiction HUMBOLDT COUNTY/HUMBOLDT COUNTY SUPERIOR	
Type of Arrest FORMAL COMPLAINT	Type of Contact COMPLAINT	RMS Case Number: FW-2312-0453	
Type of Report COMMERCIAL FISHING			
Location/Subject/Incident Name F/V GERRY B FGC 9004		Arresting/Case Officer NORRIS, TAYLOR M 0882	

biweekly report that is submitted to the department. All reports shall be submitted via email or text to Whalesafefisheries@wildlife.ca.gov If a commercial fisher fails to submit a biweekly report, the Department sends a certified letter to the Dungeness crab permit holder advising them of the violation and the regulations. Additionally, the Department also emails the fisher the same information.

Narrative

On 8/24/2023, I received several complaints from commercial fishermen regarding Dungeness crab traps in the ocean off Eureka. I was told there were approximately 100 traps off-shore the Eel river and was given coordinates off the Eel River/Table Bluff area as a location of the middle point of the traps. According to the report, the abandoned Dungeness crab traps belonged to Ron Ghera and Fishing Vessel (F/V) Gerry B. At the time of the report, the commercial Dungeness crab fishery in this area had been closed since July 15, 2023. All commercial Dungeness crab gear shall be removed by the closure and no commercial traps shall be abandoned in waters of the State (FGC 8276(d), FGC 9004).

On 8/25/2023, I utilized CDFW Patrol Boat Mako (P/B Mako) to locate the reported traps. I responded to the reported coordinates off the Eel River and located several buoys used, from my training and experience, to mark commercial Dungeness crab traps. Based on my training and experience, commercial crab fishermen set their traps in a "string" running in a northerly and southerly direction at a specific depth along the coast. Dungeness crab traps are required to be marked with a buoy. That buoy shall be marked with the commercial fishing ID number of the captain fishing the traps and a biennial buoy tag provided by CDFW (FGC 9006, CCR T14 132.1). I inspected several of the buoys I initially located and confirmed the permit number was CT0118-T6. I used the CDFW Automated License Data System (ALDS) to confirm that permit number belonged to F/V Gerry B as previously reported. I know from previous enforcement contacts that Ronald Ghera is the owner and captain of F/V Gerry B. I know from previous enforcement contacts that F/V Gerry B, captained by Ronald Ghera, fishes for and lands commercial Dungeness crab. I also know from previous training and experience that commercial Dungeness crab fishermen use the same or close to the same buoy configuration including color and size to help them discern their gear from other fishermen. I located three separate strings of Dungeness crab gear associated with F/V Gerry B. The crab trap placement was consistent with my previous training and experience where all the traps of the same vessel were placed in a string, and are set in a northerly and southerly direction along a specific depth. I traveled along each of the three strings of Dungeness crab gear I located and counted 94 Dungeness crab trap buoys that belonged to F/V Gerry B. I recorded coordinates of the beginning buoy, the end buoy, and every 10th buoy in between of each string. I noticed a few of the buoy's were missing a Dungeness crab buoy tags, but were in-line and consistent with buoy configuration to confirm it belonged to F/V Gerry B.

I used ALDS to locate Ronald Ghera's phone number. After I located his Dungeness crab buoys, I called Mr. Ghera and left him a voicemail regarding the traps on 8/25/23. Mr. Ghera called me back a brief moment later and left a voicemail stating he knew what I was calling about and he knew about the traps that remained in the water. I spoke to Mr. Ghera over the phone at approximately 1257 hours on 8/25/23. Mr. Ghera stated he knew the traps were still in the water and proceeded to give me excuses why they were not removed. Mr. Ghera stated that his one crew man was too involved in drugs and is "up in the hills" somewhere. Mr. Ghera also expressed his mother was sick in Oregon and he is going through a hard time. I explained to Mr. Ghera those are not valid reasons to leave his commercial fishing traps in the water past the closure of the season. I was sympathetic to Mr. Ghera's sick mother and I gave Mr. Ghera several options on how to find a crew willing to help him. Mr. Ghera agreed and stated he would remove them. I instructed Mr. Ghera to remove all 94 traps at the next available weather window. I asked if he needed the coordinates of his fishing gear and he stated he did not and he knew where the gear was located off the Eel River.

On 9/4/2023 at 1202 hours, I received a voicemail from Mr. Ghera stating that he was offshore gathering his gear. I spoke to Mr. Ghera shortly after that voicemail and he explained he was going to spend the whole day offshore retrieving his gear. I explained a second time that he needs to retrieve all 94 traps. I did not hear from Mr. Ghera after 9/4/23 regarding any trouble locating gear.

On 9/16/2023 a commercial fisherman informed me he came across several traps that remained offshore that belonged

Preparer's Name and Badge Number NORRIS, TAYLOR M 0882	Date 12/19/2023	Reviewer's Name CHASE, BRENT A 0678	Date 1/4/2024
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Date/Time of Incident/Occurrence 10/30/2023 0:00		City/County/Judicial Jurisdiction HUMBOLDT COUNTY/HUMBOLDT COUNTY SUPERIOR	
Type of Arrest FORMAL COMPLAINT		Type of Contact COMPLAINT	RMS Case Number: FW-2312-0453
Type of Report COMMERCIAL FISHING			
Location/Subject/Incident Name F/V GERRY B FGC 9004			Arresting/Case Officer NORRIS, TAYLOR M 0882

to F/V Gerry B. The commercial fisherman estimated approximately 40-50 traps remained in the water. The commercial fisherman gave me the coordinates that were similar to the first coordinates I received from the original complaint. I called Mr. Ghera and asked why he still had traps in the water. Mr. Ghera stated he could not locate the rest of his traps. From my experience, Mr. Ghera has been a commercial crab fisherman captain for several seasons. As an experienced captain, Mr. Ghera knows how currents and tides can play a part in making gear hard to locate. Sometimes fisherman need to come back during a slower current or lower tide to locate gear. I told Mr. Ghera who the commercial fisherman was that had the coordinates for the rest of his traps. In the following days, Mr. Ghera made no attempt to contact the fisherman and get the coordinates or attempt to locate the remainder of the crab traps.

On 9/23/2023, I used CDFW P/B Mako to locate and document the remainder of F/V Gerry B's crab traps. I located two strings of crab buoys in the similar area as previously recorded with the same Dungeness crab buoy tag number CT0118-T6. I took photographs and coordinates of every buoy in the strings. String #1 had a 26 buoys and the string #2 had 12 buoys for a total of 38 traps remaining in the water. Due to the limited size of my patrol boat, I pulled and seized three traps from string #1 and two traps from string #2. All five traps I removed from the water had old bait jars with old bait inside, closed tops, Dungeness crab, and other marine life trapped inside(See Below). Additionally, all five crab traps failed to have the proper commercial fishermen ID number on the buoy and the Dungeness crab trap tag attached to the trap as required (FGC 9006, CCR T14 132.1)

F/V Gerry B traps pulled on 9/23/23:

#171 - 5 Dungeness crab, 1 flatfish

No buoy tag - 4 Dungeness crab

#028 - 6 Dungeness crab

#134 - 8 Dungeness crab

#222 - 1 Dungeness crab

On 10/21/2023, I used a larger CDFW patrol boat, P/B Chinook, from Fort Bragg to remove the remainder of the Dungeness crab traps abandoned by Mr. Ghera. I located the traps in the same area as previously recorded. Due to the fast current and high tide, we located and pulled and seized 13 traps (see list below). Each trap seized had old bait jars with old bait inside, closed tops, and Dungeness crab trapped inside. All traps seized on this date did not have the required commercial fishermen ID number on the buoy and the Dungeness crab trap tag attached to the wire trap (FGC 9006, CCR T14 132.1).

F/V Gerry B traps pulled on 10/21/23:

#004 - 1 Dungeness crab

#122 - 2 Dungeness crab

#093 - 6 Dungeness crab

#200 - 5 Dungeness crab

#71 - 4 Dungeness crab

#169 - 7 Dungeness crab

#133 - 3 Dungeness crab

Preparer's Name and Badge Number NORRIS, TAYLOR M 0882	Date 12/19/2023	Reviewer's Name CHASE, BRENT A 0678	Date 1/4/2024
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Date/Time of Incident/Occurrence 10/30/2023 0:00		City/County/Judicial Jurisdiction HUMBOLDT COUNTY/HUMBOLDT COUNTY SUPERIOR	
Type of Arrest FORMAL COMPLAINT		Type of Contact COMPLAINT	RMS Case Number: FW-2312-0453
Type of Report COMMERCIAL FISHING			
Location/Subject/Incident Name F/V GERRY B FGC 9004		Arresting/Case Officer NORRIS, TAYLOR M 0882	
<p>#082 - 2 Dungeness crab</p> <p>#198 - 4 Dungeness crab</p> <p>No Tag # - 5 Dungeness crab</p> <p>No Tag # - 3 Dungeness crab</p> <p>#184 - 9 Dungeness crab</p> <p># 181 - 0 Dungeness crab</p> <p>On 10/30/2023, we used P/B Chinook once again to remove the remainder of the traps with a slower current. I located the remainder of the traps in the same location I marked them previously. I removed and seized 18 additional traps from the water that belonged to F/V Gerry B. Each trap seized had old bait jars with old bait inside, closed tops, and Dungeness crab trapped inside. All traps seized on this date did not have the required commercial fisherman ID number on the buoy or the Dungeness crab trap tags attached to the wire trap (FGC 9006, CCR T14 132.1).</p> <p>F/V Gerry B traps pulled on 10/30/23:</p> <p>#075 - 10 Dungeness crab</p> <p>#100 - 7 Dungeness crab</p> <p>#233 - 7 Dungeness crab</p> <p>No Tag # - 1 Dungeness crab</p> <p>#034 - 0 Dungeness crab</p> <p>#229 - 4 Dungeness crab</p> <p>#151 - 8 Dungeness crab</p> <p>#172 - 0 Dungeness crab</p> <p>#185 - 3 Dungeness crab</p> <p>#231 - 7 Dungeness crab</p> <p>#182 - 0 Dungeness crab</p> <p>#180 - 2 Dungeness crab</p> <p>#160 - 9 Dungeness crab</p> <p>#113 - 5 Dungeness crab</p> <p>#189 - 3 Dungeness crab</p> <p>#236 - 0 Dungeness crab</p> <p>#095 - 4 Dungeness crab</p>			
Preparer's Name and Badge Number NORRIS, TAYLOR M 0882		Date 12/19/2023	Reviewer's Name CHASE, BRENT A 0678
			Date 1/4/2024



Date/Time of Incident/Occurrence 10/30/2023 0:00	City/County/Judicial Jurisdiction HUMBOLDT COUNTY/HUMBOLDT COUNTY SUPERIOR		
Type of Arrest FORMAL COMPLAINT	Type of Contact COMPLAINT	RMS Case Number: FW-2312-0453	
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Location/Subject/Incident Name F/V GERRY B FGC 9004		Arresting/Case Officer NORRIS, TAYLOR M 0882	

#210 - 0 Dungeness crab

All traps were seized per FGC 9008 and stored in a secured facility. Every trap seized failed to have the required trap tag or commercial fisherman ID number on the buoy that belonged to Ronald Ghera. Several other numbers were observed on the buoys. One of them belonged to a Mike Ghera and others were not associated with anything in our ALDS system. All trap locations were placed into google earth to show the pattern the traps were found. See attached google earth images.

On 12/20/23, I reached out to Lieutenant Wolvek regarding any missing Bi-weekly reports for Mr. Ghera and the F/V Gerry B. Lt. Wolvek stated Mr. Ghera failed to submit a bi-weekly report for a Dungeness crab landing on May 13th as well as final report for the end of the season. I logged on to the CDFW bi-weekly reporting system and confirmed Mr. Ghera failed to submit a bi weekly report for May 1-15 when he had an associated landing and failed to submit a final season ending report as required by regulation. Dungeness crab landings are attached for F/V Gerry B along with reporting records.

Disposition

The California Department of Fish and Wildlife is requesting the Humboldt County District Attorney's Office file the following misdemeanor charges on Mr. Ronald Ghera:

1. FGC 8276(d) - All traps shall be removed by end of season.
2. FGC 9004 - No traps shall be abandoned in waters of this state.
3. FGC 9006(b) - All Dungeness crab trap buoys shall be marked with operators license number.
4. CCR T14 132.1(a) - All traps shall be marked with a trap tag.
5. CCR T14 132.8(g)(1) - Bi-weekly reports required.

The California Department of Fish and Wildlife requests Mr. Ghera's commercial fishing license and Dungeness crab permit number CT0118-T6 be suspended for a period of 1 year.

The California Department of Fish and Wildlife request all evidence seized be forfeited.

Verbatim code definitions below:

§ FGC 8276. Season; Restrictions on taking for commercial purposes
Except as provided in Section 8276.2 or 8277:

(a) Dungeness crab may be taken for commercial purposes in Districts 6, 7, 8, and 9 only between December 1 and July 15.

(b) Dungeness crab may be taken for commercial purposes in all other districts only between November 15 and June 30.

(c) Dungeness crab may not be taken for commercial purposes in any district, or part of a district, lying within the portions of Crescent City Harbor between the south sand barrier and the breakwater.

(d) All Dungeness crab traps shall be removed from state waters by 11:59 p.m. on the last day of the applicable Dungeness crab season.

§ FGC 9004. Maximum intervals for servicing traps; Abandoned traps
Every trap shall be raised, cleaned, serviced, and emptied at intervals, not to exceed

Preparer's Name and Badge Number NORRIS, TAYLOR M 0882	Date 12/19/2023	Reviewer's Name CHASE, BRENT A 0678	Date 1/4/2024
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Date/Time of Incident/Occurrence 10/30/2023 0:00	City/County/Judicial Jurisdiction HUMBOLDT COUNTY/HUMBOLDT COUNTY SUPERIOR		
Type of Arrest FORMAL COMPLAINT	Type of Contact COMPLAINT	RMS Case Number: FW-2312-0453	
Type of Report COMMERCIAL FISHING			
Location/Subject/Incident Name F/V GERRY B FGC 9004		Arresting/Case Officer NORRIS, TAYLOR M 0882	

96 hours, weather conditions at sea permitting, and no trap shall be abandoned in the waters of this state.

§ FGC 9006. Marking of traps used to take finfish or crustaceans with buoy; Identification numbers
Every trap used to take finfish or crustaceans shall be marked with a buoy. Each buoy shall be marked to identify the operator as follows:

- (a) For a trap used to take lobster the commercial fishing license identification number followed by the letter "P."
- (b) For a trap used to take Dungeness crab or hagfish, the commercial fishing license identification number only.
- (c) For a trap used to take finfish other than sablefish or hagfish, the commercial fishing license identification number followed by the letter "Z."
- (d) For a trap used to take sablefish, the commercial fishing license identification number followed by the letter "B."

§ CCR T14132.1. Dungeness Crab Trap Tags, Biennial Buoy Tags, and Trap and Buoy Tag Allocations.

- (a) Dungeness Crab Trap Tags. Every Dungeness crab trap aboard a permitted Dungeness crab vessel and fished in California waters shall have a valid tag attached to the Dungeness crab trap.
 - (1) Dungeness crab trap tags shall be supplied by the owner of the Dungeness crab trap and shall contain the trap owner's telephone number.
 - (2) A Dungeness crab trap tag is required on Dungeness crab traps onboard a permitted Dungeness crab vessel.
 - (3) If the information on the tag is illegible or incorrect, or if the tag is missing from the Dungeness crab trap for any reason, the trap shall be considered not in compliance, and shall not be used to take Dungeness crab for commercial purposes.
- (b) Dungeness Crab Biennial Buoy Tags. As required by Section 9005 of the Fish and Game Code, every Dungeness crab trap placed in waters of the state to take Dungeness crab for commercial purposes shall be marked with a buoy. Each Dungeness crab trap on board or fished from a permitted Dungeness crab vessel is required to have a biennial buoy tag affixed to the main buoy, known hereafter as buoy tag, pursuant to the provisions of Section 8276.5(a)(1)(D) of the Fish and Game Code. The buoy tag shall contain the department-assigned Dungeness crab vessel permit number and trap tier number. All of the buoy tags allocated to each Dungeness crab vessel permit as described in this Section and Section 8276.5(a)(1) of the Fish and Game Code shall be purchased by the permit holder biennially at the same time a Dungeness crab vessel permit is purchased or the permit shall be void pursuant to Section 8276.5(a)(3)(A) of the Fish and Game Code.

§ CCR T14 132.8. Risk Assessment Mitigation Program: Commercial Dungeness Crab Fishery.

- (g) Mandatory Data Reporting Requirements
 - (1) Fishing Activity Reporting Requirement: When participating in the California commercial Dungeness crab fishery, all vessels must submit bi-weekly reports that include permit number, current Fishing Zone,

Preparer's Name and Badge Number NORRIS, TAYLOR M 0882	Date 12/19/2023	Reviewer's Name CHASE, BRENT A 0678	Date 1/4/2024
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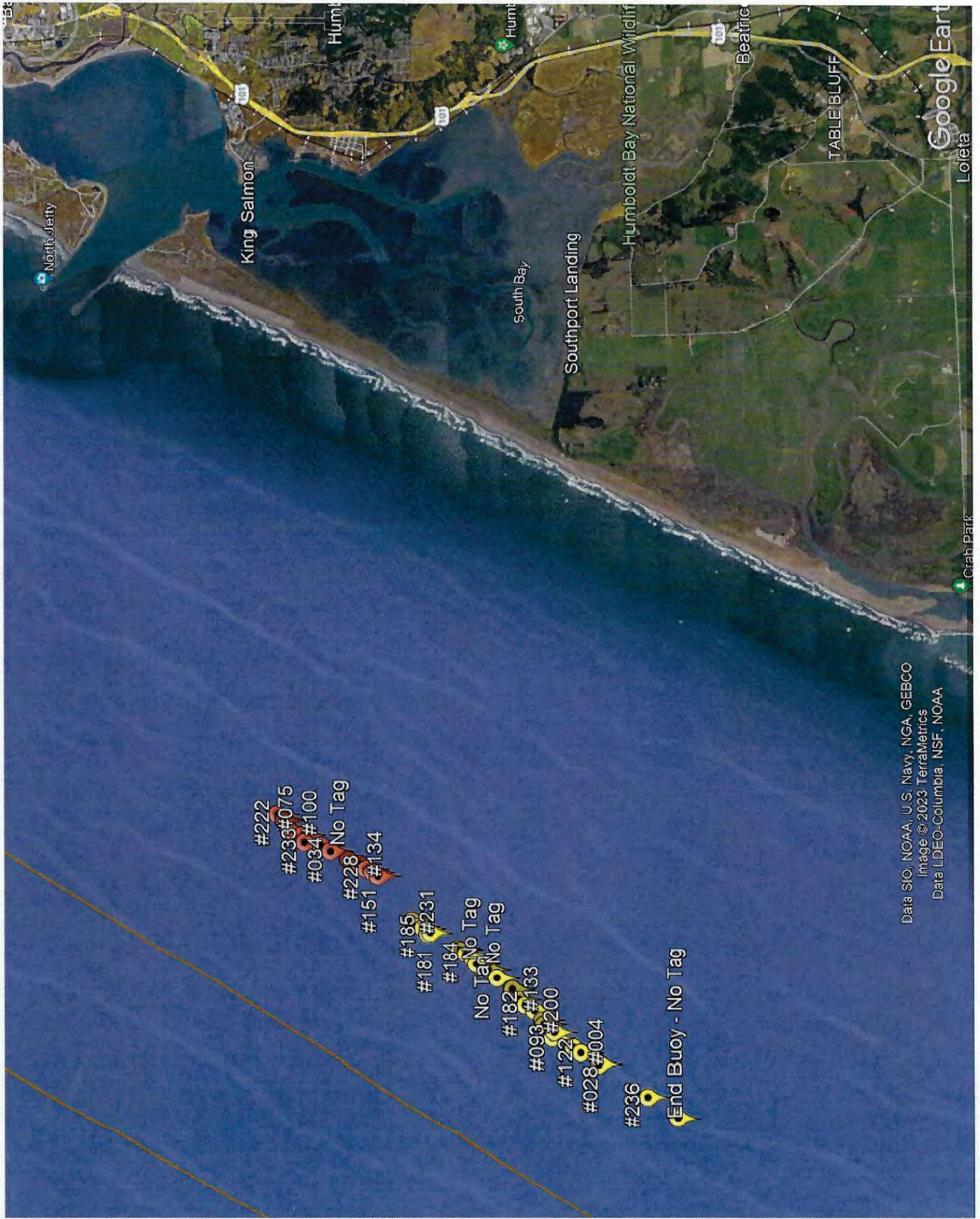
Date/Time of Incident/Occurrence 10/30/2023 0:00		City/County/Judicial Jurisdiction HUMBOLDT COUNTY/HUMBOLDT COUNTY SUPERIOR	
Type of Arrest FORMAL COMPLAINT		Type of Contact COMPLAINT	RMS Case Number: FW-2312-0453
Type of Report COMMERCIAL FISHING			
Location/Subject/Incident Name F/V GERRY B FGC 9004			Arresting/Case Officer NORRIS, TAYLOR M 0882

depth range, and number of traps deployed at the time of reporting. Reports shall be submitted on or before the first and 16th day of each month.

At the conclusion of the Fishing Season the number of lost traps shall also be reported on the final bi-weekly report that is submitted to the department. All reports shall be submitted via email or text to

Whalesafefisheries@wildlife.ca.gov.

Preparer's Name and Badge Number NORRIS, TAYLOR M 0882	Date 12/19/2023	Reviewer's Name CHASE, BRENT A 0678	Date 1/4/2024
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Data SIO, NOAA, U.S. Navy, NGA, GEBCO
Image © 2023 TerraMetrics
Data LDEO-Columbia, NSF, NOAA

#171
#185
#172
#181
#231

#182
#184
#180
No Tag
#113
No Tag
No Tag
#160

#189
#198
#182
#133
#169
#071
#093
#200

#122
#028

#004

#236

Data SIO, NOAA, U.S. Navy, NGA, GEBCO

End Buoy - No Tag

#222

#210

#075

#233

#100

No Tag

#034

#095

#229

#228

#151

#134

IFQ VESSEL ACCOUNT # IFQ MANAGEMENT AREA	Fed. LE Permit # Trawl Endorsed	Inside/Outside	Sablefish Tier
Inside State Waters			

CALIFORNIA DEPARTMENT OF FISH AND GAME
 TRANSPORTATION #

MONTH DAY YEAR
5 13 2023

332129E - FINAL
 Version 1

FISHERMAN LAST NAME	F.I.	VESSEL NAME	FISH BUSINESS NAME
Gherg	R	Gerry B	Triple G LLC (86500)
I.D. NUMBER		VESSEL I.D.	FISH BUSINESS I.D. STATE PERMIT NUMBER
L71886		38266	86500-001
PORT OF FIRST LANDING		LOCATION WHERE FISH WERE CAUGHT	PRIMARY GEAR USED
220		0217	27
EUREKA		NORTHERN CALIFORNIA	CRAB OR LOBSTER TRAP

FISH NAME	POUNDS	PRICE	TOTAL AMOUNT	GRADE/ SIZE	CONDITION	GEAR	GF #	# FISH	T/H	W/B
800 Crab, Dungeness	666.00	\$5.0000	\$3,330.00			0 27				
Gross Total	666.00		\$3,330.00							
Take Home	0.00		0.00							
Net Total	666.00		\$3,330.00							

NOTES

FISHERMAN/PERMITTEE SIGNATURE: _____

RECEIVED BY: _____

CERTIFIED UNDER PENALTY OF PERJURY AS TRUE AND CORRECT

IFQ VESSEL ACCOUNT # IFQ MANAGEMENT AREA	Fed. LE Permit # Trawl Endorsed Inside/Outside	Sablefish Tier
Inside State Waters		

CALIFORNIA DEPARTMENT OF FISH AND GAME

MONTH DAY YEAR
3 27 2023

320333E - FINAL
 Version 1

TRANSPORTATION #

FISHERMAN LAST NAME	F.I.	VESSEL NAME	FISH BUSINESS NAME
Ghera	R	Gerry B	Pacific Seafoods (85532 & 02436)
I.D. NUMBER		VESSEL I.D.	FISH BUSINESS I.D. STATE PERMIT NUMBER
L71886		38266	85532-001
PORT OF FIRST LANDING		LOCATION WHERE FISH WERE CAUGHT	PRIMARY GEAR USED
220		1041	27
EUREKA		EUREKA	CRAB OR LOBSTER TRAP

FISH NAME	POUNDS	PRICE	TOTAL AMOUNT	GRADE/ SIZE	CONDITION	GEAR	GF #	# FISH	T/H	W/B
800 Crab, Dungeness	1,124.00	\$2.7500	\$3,091.00			6 27				

Gross Total	1,124.00	\$3,091.00
Take Home	0.00	0.00
Net Total	1,124.00	\$3,091.00

NOTES

FISHERMAN/PERMITTEE SIGNATURE: _____

RECEIVED BY: _____

CERTIFIED UNDER PENALTY OF PERJURY AS TRUE AND CORRECT

IFQ VESSEL ACCOUNT # IFQ MANAGEMENT AREA	Fed. LE Permit # Trawl Endorsed Inside/Outside	Sablefish Tier
Inside State Waters		

CALIFORNIA DEPARTMENT OF FISH AND GAME

MONTH DAY YEAR
2 20 2023

186894E - FINAL
 Version 1

TRANSPORTATION #

FISHERMAN LAST NAME Ghera	F.I. R	VESSEL NAME Gerry B	FISH BUSINESS NAME Pacific Seafoods (85532 & 02436)
I.D. NUMBER L71886		VESSEL I.D. 38266	FISH BUSINESS I.D. STATE PERMIT NUMBER 85532-001
PORT OF FIRST LANDING 220 EUREKA		LOCATION WHERE FISH WERE CAUGHT 1041 EUREKA	PRIMARY GEAR USED 27 CRAB OR LOBSTER TRAP

FISH NAME	POUNDS	PRICE	TOTAL AMOUNT	GRADE/ SIZE	CONDITION	GEAR	GF #	# FISH	T/H	W/B
800 Crab, Dungeness	2,518.00	\$2.0000	\$5,036.00			6	27			
Gross Total	2,518.00		\$5,036.00							
Take Home	0.00		0.00							
Net Total	2,518.00		\$5,036.00							

NOTES

FISHERMAN/PERMITTEE SIGNATURE: _____

RECEIVED BY: _____

CERTIFIED UNDER PENALTY OF PERJURY AS TRUE AND CORRECT

IFQ VESSEL ACCOUNT # IFQ MANAGEMENT AREA	Fed. LE Permit # Trawl Endorsed Inside/Outside	Sablefish Tier
Inside State Waters		

CALIFORNIA DEPARTMENT OF FISH AND GAME	MONTH	DAY	YEAR	186861E - FINAL
	2	8	2023	Version 1

TRANSPORTATION #

FISHERMAN LAST NAME	F.I.	VESSEL NAME	FISH BUSINESS NAME
Ghera	R	Gerry B	Pacific Seafoods (85532 & 02436)
I.D. NUMBER		VESSEL I.D.	FISH BUSINESS I.D. STATE PERMIT NUMBER
L71886		38266	85532-001
PORT OF FIRST LANDING		LOCATION WHERE FISH WERE CAUGHT	PRIMARY GEAR USED
220		1041	27
EUREKA		EUREKA	CRAB OR LOBSTER TRAP

FISH NAME	POUNDS	PRICE	TOTAL AMOUNT	GRADE/ SIZE	CONDITION	GEAR	GF #	# FISH	T/H	W/B
800 Crab, Dungeness	3,588.00	\$2.0000	\$7,176.00				6	27		
Gross Total	3,588.00		\$7,176.00							
Take Home	0.00		0.00							
Net Total	3,588.00		\$7,176.00							

NOTES

FISHERMAN/PERMITTEE SIGNATURE: _____ RECEIVED BY: _____

CERTIFIED UNDER PENALTY OF PERJURY AS TRUE AND CORRECT

IFQ VESSEL ACCOUNT # IFQ MANAGEMENT AREA	Fed. LE Permit # Trawl Endorsed Inside/Outside	Sablefish Tier
Outside State Waters		

CALIFORNIA DEPARTMENT OF FISH AND GAME
 TRANSPORTATION #

MONTH DAY YEAR
1 30 2023

186776E - FINAL
 Version 1

FISHERMAN LAST NAME	F.I.	VESSEL NAME	FISH BUSINESS NAME
Ghera	R	Gerry B	Pacific Seafoods (85532 & 02436)
I.D. NUMBER		VESSEL I.D.	FISH BUSINESS I.D. STATE PERMIT NUMBER
L71886		38266	85532-001
PORT OF FIRST LANDING		LOCATION WHERE FISH WERE CAUGHT	PRIMARY GEAR USED
220		1041	27
EUREKA		EUREKA	CRAB OR LOBSTER TRAP

FISH NAME	POUNDS	PRICE	TOTAL AMOUNT	GRADE/ SIZE	CONDITION	GEAR	GF #	# FISH	T/H	W/B
800 Crab, Dungeness	1,903.00	\$2.2500	\$4,281.75			0 27				
Gross Total	1,903.00		\$4,281.75							
Take Home	0.00		0.00							
Net Total	1,903.00		\$4,281.75							

NOTES

Dungeness Crab Biweekly Fishing Activity Report

↓ Search Criteria

Results: 5 logs found

	Date Received	Permit Number	Email Address	Season-Period	Ramp Zone	Last Edited	Submitted
Open Record	4/7/2023	CT0118-T6		2022-2023 - Mar 16	1		4/7/2023
Open Record	4/7/2023	CT0118-T6		2022-2023 - Apr 1	1		4/7/2023
Open Record	3/29/2023	CT0118-T6		2022-2023 - Mar 1	1		3/29/2023
Open Record	3/29/2023	CT0118-T6		2022-2023 - Feb 16	1		3/29/2023
Open Record	3/29/2023	CT0118-T6		2022-2023 - Feb 1	1		3/29/2023

Showing 1 to 5 of 5 entries

Trap Number 171 from Permit CTO118-T6



Dungeness Crab Buoy Tag # 171



Dungeness Crab Trap #171 W/ Dungeness Crab and Flatfish



2024 Case Report

Citation Number 298512



Date/Time of Incident/Occurrence 07/16/2024 0:00		City/County/Judicial Jurisdiction HUMBOLDT COUNTY SUPERIOR	
Type of Arrest FORMAL COMPLAINT	Type of Contact COMPLAINT	RMS Case Number: FW-2407-1031	
Type of Report			
Location/Subject/Incident Name RON GHERA FOMAL COMPLAINT		Arresting/Case Officer WORTHLEY, ETHAN 1073	

SUSPECT INFORMATION

Name Suspect (First, Middle, Last) RONALD WALTER GHERA	Involvement Type SUSPECT	Sex M	Date of Birth [REDACTED]	Citation Number 298512
Suspect Address (Street, Apt., City, State, Zip Code) [REDACTED] FORTUNA, CA, 95540				Home Phone [REDACTED]
Identification Type [REDACTED]	Suspect Description			
	General: [REDACTED]	Hair: [REDACTED]	Eyes: [REDACTED]	Race: [REDACTED]

OFFENSES AND CHARGES

8276(a) FGC DUNGENESS CRAB SEASON, DISTRICTS 6, 7, 8, 9
9004 FGC TRAP RAISING INTERVALS
132.8(g)(1) T14 DUNGENESS CRAB BI-WEEKLY REPORTING REQUIREMENTS
132.1(a) T14 DUNGENESS CRAB TRAP TAGS, BIENNIAL BUOY TAGS, AND TRAP AND BUOY TAG ALLOCATIONS - DUNGENESS CRAB TRAP TAGS
CCR Title 14-132.1(b)-Dungeness Crab Biennial Buoy Tags. As required by Section 9005 of the Fish and Game Code, every Dungeness crab trap placed in waters of the state to take Dungeness crab for commercial purposes shall be marked with a buoy. Each Dungeness crab trap on board or fished from a permitted Dungeness crab vessel is required to have a biennial buoy tag affixed to the main buoy, known hereafter as buoy tag, pursuant to the provisions of Section 8276.5(a)(1)(D) of the Fish and Game Code. The buoy tag shall contain the department-assigned Dungeness crab vessel permit number and trap tier number. All of the buoy tags allocated to each Dungeness crab vessel permit as described in this Section and Section 8276.5(a)(1) of the Fish and Game Code shall be purchased by the permit holder biennially at the same time a Dungeness crab vessel permit is purchased or the permit shall be void pursuant to Section 8276.5(a)(3)(A) of the Fish and Game Code. The nonrefundable fee for each buoy tag is \$5.00

VEHICLE INFORMATION

Status: Description: FISHING VESSEL GERRY B	Evidence Photographed?
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Preparer's Name and Badge Number WORTHLEY, ETHAN 1073	Date 7/30/2024	Reviewer's Name NORRIS, TAYLOR M 0882	Date 8/15/2024
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Date/Time of Incident/Occurrence 07/16/2024 0:00		City/County/Judicial Jurisdiction HUMBOLDT COUNTY SUPERIOR	
Type of Arrest FORMAL COMPLAINT	Type of Contact COMPLAINT	RMS Case Number: FW-2407-1031	
Type of Report			
Location/Subject/Incident Name RON GHERA FOMAL COMPLAINT		Arresting/Case Officer WORTHLEY, ETHAN 1073	

CASE SYNOPSIS

Formal Complaint F/V-Gerry B operated by Ronald Walter Ghera

NARRATIVE

BACKGROUND

The California Department of Fish and Wildlife (CDFW) regulates the commercial crab fishery off the coast of California. A priority of the Marine Enforcement Division (MED) is to enforce all laws regulating the commercial Dungeness crab fishery. One top priority in MED is to manage the commercial Dungeness crab fishing gear to minimize risk of entanglement of marine mammals. Abandoned commercial crab traps pose an increased threat to marine wildlife and could affect the entire commercial crab fishery.

Dungeness crab traps sit on the ocean floor and are attached to a vertical buoy line that is attached to a floating buoy. Commercial Dungeness crab traps are required to be marked properly, serviced, and removed by the end of the commercial crab season. Dungeness crab anglers are required to submit bi-weekly reports to give CDFW important information. The laws pertaining to these requirements include:

Fish and Game Code 8276(d)- All Dungeness crab traps shall be removed from state waters by 11:59 p.m. on the last day of the applicable Dungeness crab season.

Fish and Game Code 9004- Every trap shall be raised, cleaned, serviced, and emptied at intervals, not to exceed 96 hours, weather conditions at sea permitting, and no trap shall be abandoned in the waters of this state.

Fish and Game code 9006(b)- For a trap used to take Dungeness crab or hagfish, the commercial fishing license identification number only.

California Code of Regulations Title 14- 132.1(a)- Dungeness Crab Trap Tags. Every Dungeness crab trap aboard a permitted Dungeness crab vessel and fished in California waters shall have a valid tag attached to the Dungeness crab trap

California Code of Regulations Title 14- 132.8(g)(1)- Fishing Activity Reporting Requirement: When participating in the California commercial Dungeness crab fishery, all vessels must submit bi-weekly reports that include permit number, current Fishing Zone, depth range, and number of traps deployed at the time of reporting. Reports shall be submitted on or before the first and 16th day of each month. At the conclusion of the Fishing Season the number of lost traps shall also be reported on the final bi-weekly report that is submitted to the department. All reports shall be submitted via email or text to Whalesafefisheries@wildlife.ca.gov.

All Commercial fisherman who participates in the commercial Dungeness Crab fishery are expected to abide by all laws and regulations ensuring the future of the fishery.

Narrative:

In July Lieutenant (LT) Taylor Norris informed me he received a tip and coordinates about commercial crab gear belonging to the fishing vessel "Gerry B" owned and operated by Ronald Walter Ghera was not being serviced. Using the Pacific States Marine Fisheries Commission portal (E-TIX) we discovered Ghera landed crab twice this year on 02/13/24 and 02/29/24. Based on my training and experience I know commercial crab fisherman will not service their traps in the middle of the commercial crab season without harvesting Dungeness crab either for personal use or for sale. The lack of Gheras landings for the 2024 season indicates he was not harvesting Dungeness crab and he was not servicing his gear.

Preparer's Name and Badge Number WORTHLEY, ETHAN 1073	Date 7/30/2024	Reviewer's Name NORRIS, TAYLOR M 0882	Date 8/15/2024
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Date/Time of Incident/Occurrence 07/16/2024 0:00		City/County/Judicial Jurisdiction HUMBOLDT COUNTY SUPERIOR	
Type of Arrest FORMAL COMPLAINT	Type of Contact COMPLAINT	RMS Case Number: FW-2407-1031	
Type of Report			
Location/Subject/Incident Name RON GHERA FOMAL COMPLAINT		Arresting/Case Officer WORTHLEY, ETHAN 1073	

On 07/05/2024, Lieutenant (LT) Taylor Norris and I were on the Patrol Boat (PB) Mako, offshore of the Eel River, locating the commercial fishing Dungeness crab gear of vessel "Gerry B" (Vessel Identification number #38266) owned and operated by Ronald Walter Ghera. Based on my training and experience I know that commercial crab fisherman often run their fishing gear from northernly and southernly direction in a line called a "string". I also know commercial crab fisherman use specific-colored buoys or use specific buoy configurations to discern their commercial crab gear from others. Using PB Mako we located two stings of crab gear with similar color and configuration with a department issued buoy tag attached to the buoy #CT0118-T6. (using our Automated Licensing Data System I was able to confirm Gheras Dungeness crab permit #CT0118-T6). Each buoy tag is associated with a single crab trap. The buoy tag is labeled with a three-digit number (ex- #000). Based on the buoy tag #CT0118-T6, color, configuration, and location we were able to determine the crab gear belonged to Ghera. We marked approximately 48 of Gheras commercial Dungeness crab traps using the PB Makos GPS system. At approximately 1200 hours the PB Marlin arrived to assist us in pulling the gear to be marked with a 96-hour notification (Fish and Game Code 9004- Every trap shall be raised, cleaned, serviced, and emptied at intervals, not to exceed 96 hours, weather conditions at sea permitting, and no trap shall be abandoned in the waters of this state). Under Fish and Game Code 9002(c)subdivision) (a) allows employees to pull commercial crab gear in the official performance of their duty.

One note was placed into four different traps and was labeled with LT. Norris's information. The note advised whoever pulled the trap to call Lt. Norris and inform him the trap was pulled in accordance with Fish and Game Code 9004. I also attached a card to the four traps using a zip tie closing the trap. The card attached with the zip tie to the trap was labeled with Lt. Ian Berry's information. It advised the fisherman who pulled the gear to contact Lt. Bearry upon pulling the trap to make sure they are in accordance with Fish and Game Code 9004. I would like to note the fisherman would have to physically cut the zip tie with the card attached off to service the trap. (trap #223, #209, #225, #216 see 96-hour map and photos attached). I would like to note the weather between July 5th and July 10th permitted the F/V Gerry B to service his traps within the 96-hour window. Using the National Oceanic and Atmospheric Administration weather Observation (NOAA) data system, I was able to locate a synopsis of weather information and ocean conditions gathered by station 46244 Humboldt Bay-North spit Bouy. Station 46244 records wave height in 30 min intervals. The average wave height from 07/05/24-07/10/24:

07/5 1.67 meters – 5.4 feet

07/06-1.12 meters- 3.6 feet

07/07- 1.02 meter- 3.34 feet

07/08- 1.05 meters- 3.3 feet

07/09- 1.09 meters- 3.5 feet

07/10- 1.25 meters-4.1 feet

I also screenshotted the NOAA weather synopsis for the ocean conditions from PT. St George to Cape Mendocino from July 6th-July 10th photos on flash drive. The days we pulled and seized Gheras gear on July 16th, 17th, and 18th the ocean conditions were optimal for the F/V Gerry B to pull his commercial crab gear. Wave height recorded from the NOAA station 46244 collected from July 16th,17th and 18th:

07/16/24- 1.05 meters- 3.4 feet

07/17/24 -0.93 meters- 2.9 feet

07/18/24-0.90 meters-2.9 feet

On 07/16/24, at approximately 0900 hours, a day after the closure of the commercial crab fishery (Fish and Game Code

Preparer's Name and Badge Number WORTHLEY, ETHAN 1073	Date 7/30/2024	Reviewer's Name NORRIS, TAYLOR M 0882	Date 8/15/2024
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Date/Time of Incident/Occurrence 07/16/2024 0:00		City/County/Judicial Jurisdiction HUMBOLDT COUNTY SUPERIOR	
Type of Arrest FORMAL COMPLAINT		Type of Contact COMPLAINT	RMS Case Number: FW-2407-1031
Type of Report			
Location/Subject/Incident Name RON GHERA FOMAL COMPLAINT			Arresting/Case Officer WORTHLEY, ETHAN 1073

(a)- Dungeness crab may be taken for commercial purposes in Districts 6, 7, 8, and 9 only between December 1 and July 15). Lt Taylor Norris and I located the trap (#223, #209, #225, #216) marked with the 96-hour notice on 07/05/24 (approximately 264 hours later since the traps were marked). I pulled the gear, and I visually observed both Lt. Norris's and Lt. Bearry's 96 hours' notice I placed inside and attached to Gheras crab trap on 07/05/2024. This indicates the traps were not serviced according to Fish and Game Code 9004. I would like to note the 96-hour notices were in readable condition when I pulled the traps.

On **07/16/24** the following of Gheras Dungeness Crab traps were pulled and seized with the PB Mako:

223

#209

#225

#216

I would like to note Gheras traps contained numerous Dungeness crabs inside the trap. This indicates the traps were still fishing and able to catch Dungeness crab. (See photos attached).

On **07/16/24** Gheras Dungeness crab traps were in the water fishing. Dungeness crab straps in the water after the closure of the season on 07/15/2024 at 1159 pm is a violation of **Fish and Game Code 8276(d)- All Dungeness crab traps shall be removed from state waters by 11:59 p.m. on the last day of the applicable Dungeness crab season.** At approximately 1400 hours I was assisted by Lieutenant Taylor Norris and the PB Marlin crew pulling the gear that was "abandoned" by Ghera after the closure of the season.

On **07/16/24** the following of Gheras commercial crab traps were pulled and seized with the PB Marlin:

001

161

014

133

167(Broke trap)

143

134

144

153

141

127

131

196

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152 (expired trap tag)

097

164 (expired trap tag)

148 (Broke trap)

126

Broke trap

202

171

166

169

221

174

218 (Broke trap)

173

220

204

222

No buoy tag

206

I would like to note the traps we pulled contained live crab, dead crab, and an abundance of wood debris. The traps were also "sanded in". This term is used when traps have been buried in sand and become difficult to remove. This often occurs when crab traps are left out in the ocean for a prolonged period of time. This required us to tie the traps to the PB Marlin and use the boat to physically pull the traps out of the sand before pulling them using the boat's crab davit. The buoys and the rope connecting the trap to the buoy were covered in algae growth and various marine crustaceans. Commercial crab fisherman will often clean the buoys and lines when the gear is serviced properly. The bait located inside the commercial crab trap (often located in a plastic container called a "bait container") was old and some were empty. Crab fisherman will often add fresh bait or refill bait containers when the traps are serviced. The "rotten cotton" (a term used to describe the destructible cotton that is required by law to have covering the escape opening on a commercial crab trap) was missing from each trap and was not replaced. Commercial crab fisherman will often replace the "rotten cotton" if it has fallen off to ensure the crab will not escape from the trap. None of Gheras traps had the "rotten cotton" placed of the escape openings indicating they were not serviced. I would also like to note two of the Dungeness crab traps had expired buoy tags, one buoy had no buoy tag attached, and none of Gheras Dungeness crab traps had trap tags attached to the trap as required by law. The trap doors (the top portion of the trap where you

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can open it and gain access to inside the trap) were shut closed and were still catching crab.

California Code of Regulations Title 14- 132.1(a)- Dungeness Crab Trap Tags. Every Dungeness crab trap aboard a permitted Dungeness crab vessel and fished in California waters shall have a valid tag attached to the Dungeness crab.

California Code of Regulations Title 14- 132.1(b)-Dungeness Crab Biennial Buoy Tags. As required by Section 9005 of the Fish and Game Code, every Dungeness crab trap placed in waters of the state to take Dungeness crab for commercial purposes shall be marked with a buoy. Each Dungeness crab trap on board or fished from a permitted Dungeness crab vessel is required to have a biennial buoy tag affixed to the main buoy, known hereafter as buoy tag, pursuant to the provisions of Section 8276.5(a)(1)(D) of the Fish and Game Code. The buoy tag shall contain the department-assigned Dungeness crab vessel permit number and trap tier number. All of the buoy tags allocated to each Dungeness crab vessel permit as described in this Section and Section [8276.5\(a\)\(1\)](#) of the Fish and Game Code shall be purchased by the permitholder biennially at the same time a Dungeness crab vessel permit is purchased or the permit shall be void pursuant to Section [8276.5\(a\)\(3\)\(A\)](#) of the Fish and Game Code. The nonrefundable fee for each buoy tag is \$5.00

On **07/17/24**, at approximately 0830 hours, I was again assisted by Lt. Norris and the Marlin crew in marking and pulling Gheras commercial Dungeness crab gear in violation of **Fish and Game Code 8276(d)**.

On **07/17/2024** the following of Gheras commercial crab traps were pulled and seized with the PB Marlin:

203

215

205

213

217

025

212

219

208

201

207

172

013

023

020

019

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210

150

I would like to note the traps pulled on 07/17/2024 were in very similar condition as the traps pulled the day prior 07/16/2024. The traps contained live crab, dead crab, and an abundance of wood debris. Gheras traps were "sanded in" and required us to physically remove the traps from the sand using the PB Marlin before being pulled using the crab davit. The buoys and the rope connecting the trap to the buoy were covered in algae growth and various marine crustaceans. Commercial crab fisherman will often clean the buoys and lines when the gear is serviced properly. The bait located inside the commercial crab trap (often located in a plastic container called a "bait container") was old and some were empty. Crab fisherman will often add fresh bait or refill bait containers when the traps are serviced. The "rotten cotton" (a term used to describe the destructible cotton that is required by law to have covering the escape opening on a commercial crab trap) was missing from each trap and was not replaced. Commercial crab fisherman will often replace the "rotten cotton" if it has fallen off to ensure the crab will not escape from the trap. None of Gheras traps had the "rotten cotton" placed of the escape openings indicating they were not serviced. All the crab trap doors were shut closed and still catching crab. I would also like to note none of Gheras Dungeness crab traps had trap tags as required by law.

California Code of Regulations Title 14- 132.1(a)- Dungeness Crab Trap Tags. Every Dungeness crab trap aboard a permitted Dungeness crab vessel and fished in California waters shall have a valid tag attached to the Dungeness crab.

Fish and Game Code 8276(d)- All Dungeness crab traps shall be removed from state waters by 11:59 p.m. on the last day of the applicable Dungeness crab season

On **07/18/2024**, at approximately 1300 hours, while on patrol on PB Marlin, we discovered an additional 20 of Gheras Dungeness crab traps. We marked and pulled the additional 20 of Gheras Dungeness crab traps in violation of **Fish and Game Code 8276(d)**.

On 07/18/2024 we pulled and seized the following commercial crab traps with the PB Marlin:

138

096

017

018

149

140

002

010

147

129

006

005

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135
128
155
152
159
130
165
003

I would like to note the traps pulled on 07/18/2024 were in very similar condition as the traps pulled the day prior 07/17/2024 and 07/16/24. The traps contained live crab, dead crab, and an abundance of wood debris. Gheras traps were "sanded in" and required us to remove the traps from the sand traps using PB Marlin before being pulled using the crab davit. The buoys and the rope connecting the trap to the buoy were covered in algae growth and various marine crustaceans. Commercial crab fisherman will often clean the buoys and lines when the gear is serviced properly. The bait located inside the commercial crab trap (often located in a plastic container called a "bait container") was old and some were empty. Crab fisherman will often add fresh bait or refill bait containers when the traps are serviced. The "rotten cotton" (a term used to describe the destructible cotton that is required by law to have covering the escape opening on a commercial crab trap) was missing from each trap and was not replaced. Commercial crab fisherman will often replace the "rotten cotton" if it has fallen off to ensure the crab will not escape from the trap. None of Gheras traps had the "rotten cotton" placed of the escape openings indicating they were not serviced. The crab trap doors were shut closed and still catching crab. I would also like to note none of Gheras Dungeness crab traps had trap tags as required by law.

California Code of Regulations Title 14- 132.1(a)- Dungeness Crab Trap Tags. Every Dungeness crab trap aboard a permitted Dungeness crab vessel and fished in California waters shall have a valid tag attached to the Dungeness crab.

Fish and Game Code 8276(d)- All Dungeness crab traps shall be removed from state waters by 11:59 p.m. on the last day of the applicable Dungeness crab season

On **07/18/2024**, at 1625 hours, I attempted to call Ron Ghera, it went to voicemail, and I left a voicemail regarding Gheras traps and informed him to call me back. As of 07/26/2024, Ghera has yet to return my phone call.

All traps were seized **Per Fish and Game code 9008-** Any trap used in violation of this code, or any regulations adopted pursuant thereto, is a public nuisance and, except as provided in [Section 9007](#), shall be seized pursuant to Article 3 (commencing with [Section 8630](#)) of Chapter 3. All traps seized were stored in a secured facility.

On **07/24/2024** I looked up Ron Gheras landing receipts using the Pacific States Marine Fisheries Commission (PSMFC) electronic fish ticket(e-tix). This allowed me to view Gheras landings from 12/01/2023(start of crab season)-07/15/24(end of crab season). According to the E-tix Ghera made only two landings in the 2023-2024 crab season. These landings were made on 02/13/24 and 02/29/24. No other landings were made during the rest of the Dungeness crab season.

On **07/24/2024** I looked up Ron Gheras bi-weekly reporting for the Fishing Vessel Gerry B. Ghera has failed to submit any Bi-weekly reports since 04/07/2023. He is required by law to submit bi-weekly reports that include permit number,

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current Fishing Zone, depth range, and number of traps deployed at the time of reporting. Reports shall be submitted on or before the first and 16th day of each month. At the conclusion of the Fishing Season the number of lost traps shall also be reported on the final bi-weekly report that is submitted to the department.

California Code of Regulations 132.8(g)(1)- Fishing Activity Reporting Requirement: When participating in the California commercial Dungeness crab fishery, all vessels must submit bi-weekly reports that include permit number, current Fishing Zone, depth range, and number of traps deployed at the time of reporting. Reports shall be submitted on or before the first and 16th day of each month. At the conclusion of the Fishing Season the number of lost traps shall also be reported on the final bi-weekly report that is submitted to the department. All reports shall be submitted via email or text to Whalesafefisheries@wildlife.ca.gov.

On **07/29/24** using or departments Marine Landing Data System (MLDS) I was able to locate Gheras landings statistics for the 2024 season:

- **02/13/24-** 2,248 pounds of Dungeness crab was landed at Pacific and Ashley seafood. 30 pounds of that was landed for personal use. Total price-\$7220.32.
- **02/29/24-** 982 pounds of Dungeness crab was landed at Pacific seafood. Total price-\$982

On **08/05/24** I called Ghera at 1642 hours(Ghera never called me back from my first phone call on 07/18/24). Ghera answered my phone call, I stated who I was and asked Ghera if I could speak with him about this year's crab season. Ghera said he was going to be honest with me. Ghera related he was struggling with alcohol and mental health. Ghera also related he had difficulty getting his crew together throughout the season. Ghera informed me he had many mechanical issues with his boat making it difficult to go out. Throughout the conversation Ghera stated "he wanted his license suspended so he could build his way back". Ghera stated "it is my fault" and "I'm not making any excuses". Ghera also stated, "we got him" and "I understand why you took my gear". I informed Ghera about his conversation with Lt. Norris (see supplemental report). Ghera informed me he was going to pull his gear after talking with Lt. Norris but his "crew never showed up". Ghera informed me he has only one crew member with little fishing experience.

I would like to note under **California Code of Regulation Title-14 132.2(b)(1)(A)-** The holder of the Dungeness crab vessel permit to which the traps are assigned cannot retrieve the traps because the permitted vessel is incapacitated due to a major mechanical failure or destroyed due to fire, capsizing, or sinking, or due to undue hardship resulting from circumstances beyond the control of the permit hold. This waiver allows any fishing vessel without a buoy tag assigned to that vessel to legally pull one's commercial crab gear if they are experiencing hardship and are unable to pull or service commercial crab gear.

See case photos in flash drive provided.

Disposition:

The California Department of Fish and Wildlife Is requesting the Humboldt District Attorney's office file the following misdemeanor charges on Ronald Ghera.

FGC 8276(d)- All Dungeness crab traps shall be removed from state waters by 11:59 p.m. on the last day of the applicable Dungeness crab season

FGC 9004-Every trap shall be raised, cleaned, serviced, and emptied at intervals, not to exceed 96 hours, weather conditions at sea permitting, and no trap shall be abandoned in the waters of this state

California Code of Regulations 132.8(g)(1)- Fishing Activity Reporting Requirement: When participating in the California commercial Dungeness crab fishery, all vessels must submit bi-weekly reports that include permit number, current Fishing Zone, depth range, and number of traps deployed at the time of reporting. Reports shall be submitted on or before the first and 16th day of each month. At the conclusion of the Fishing Season the number of lost traps shall

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also be reported on the final bi-weekly report that is submitted to the department. All reports shall be submitted via email or text to Whalesafefisheries@wildlife.ca.gov.

California Code of Regulations Title 14- 132.1(a)- Dungeness Crab Trap Tags. Every Dungeness crab trap aboard a permitted Dungeness crab vessel and fished in California waters shall have a valid tag attached to the Dungeness crab

California Code of Regulations Title 14- 132.1(b)-Dungeness Crab Biennial Buoy Tags. As required by Section 9005 of the Fish and Game Code, every Dungeness crab trap placed in waters of the state to take Dungeness crab for commercial purposes shall be marked with a buoy. Each Dungeness crab trap on board or fished from a permitted Dungeness crab vessel is required to have a biennial buoy tag affixed to the main buoy, known hereafter as buoy tag, pursuant to the provisions of Section 8276.5(a)(1)(D) of the Fish and Game Code. The buoy tag shall contain the department-assigned Dungeness crab vessel permit number and trap tier number. All of the buoy tags allocated to each Dungeness crab vessel permit as described in this Section and Section [8276.5\(a\)\(1\)](#) of the Fish and Game Code shall be purchased by the permitholder biennially at the same time a Dungeness crab vessel permit is purchased or the permit shall be void pursuant to Section [8276.5\(a\)\(3\)\(A\)](#) of the Fish and Game Code. The nonrefundable fee for each buoy tag is \$5.00

The California Department of Fish and Wildlife request all evidence to be forfeited

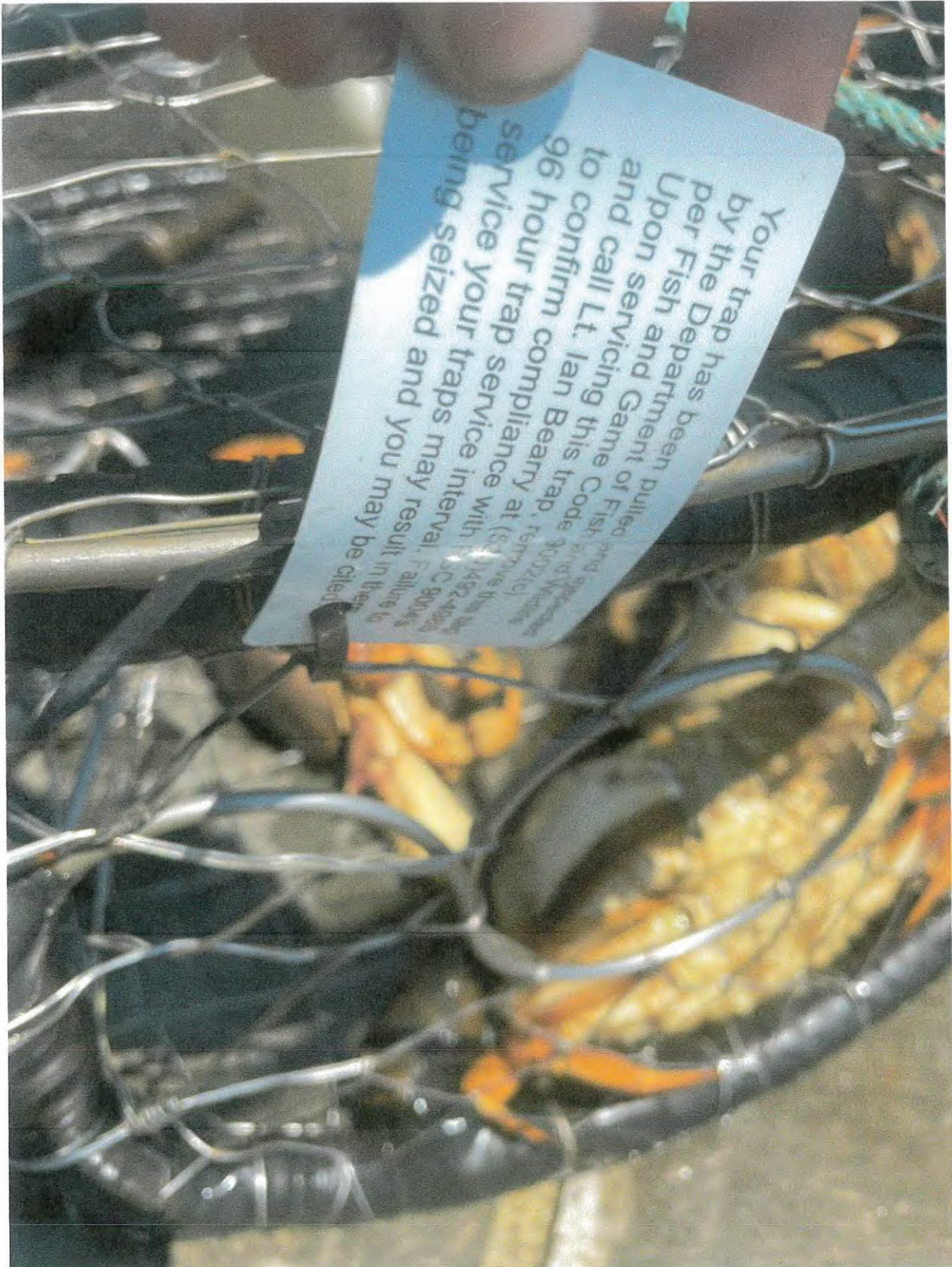
The California Department of Fish and Wildlife request Mr. Gheras' commercial fishing license and Dungeness crab permit number CT0118-T6 be suspended for a 1-year period.

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Trap Number #223 from permit number CT0118-T6 (07/05/24)



Trap Number #223 from permit number CT0118-T6 with 96 hours note zip tied to trap (07/05/24)



Trap number #223 CT0118-T6 with 96-hour notice with approximately 9 Dungeness crab
(07/05/24)



Trap Number #225 from permit number CT0118-T6 (07/05/24)



Trap number #225 CT0118-T6 with 96-hour notice with approximately 5 Dungeness crab
(07/05/24)



Trap Number #225 from permit number CT0118-T6 with 96 hours note zip tied to trap (07/05/24)



Trap Number #216 from permit number CT0118-T6 (07/05/24)



Trap number #216 CT0118-T6 with 96-hour notice with approximately 3 Dungeness crab
(07/05/24)



Trap Number #216 from permit number CT0118-T6 with 96 hours note zip tied to trap (07/05/24)



Trap Number #209 from permit number CT0118-T6 (07/05/24)



Trap number #209 CT0118-T6 with 96-hour notice with approximately 5 Dungeness crab
(07/05/24)



Trap Number #209 from permit number CT0118-T6 with 96 hours note zip tied to trap (07/05/24)



Trap Number #223 from permit number CT0118-T6 (07/16/24)



Trap Number #223 from permit number CT0118-T6 with 96 hours note zip tied to trap (07/16/24)



Trap number #223 CT0118-T6 with 96-hour notice with approximately 9 Dungeness crab
(0716/24)



Trap Number #225 from permit number CT0118-T6 (07/16/24)



Trap number# 225 CT0118-T6 with 96-hour notice with approximately 3 Dungeness crab and one dead flatfish (07/16/24)



Trap Number #225 from permit number CT0118-T6 with 96 hours note zip tied to trap (07/16/24)



Trap Number #216 from permit number CT0118-T6 (07/16/24)



**Trap number #216 CT0118-T6 with 96-hour notice with approximately 10 Dungeness crab
(07/16/24)**



Trap Number #216 from permit number CT0118-T6 with 96 hours note zip tied to trap (07/16/24)



Trap Number #209 from permit number CT0118-T6 (07/16/24)



**Trap number #209 CT0118-T6 with 96-hour notice with approximately 12 Dungeness crab
(07/16/24)**



Trap Number #209 from permit number CT0118-T6 with 96 hours note zip tied to trap (07/16/24)



Traps seized (#trap tags)

Legend
★ (notice)



Google Earth

Data SIO, NOAA, U.S. Navy, NGA, GEBCO

Image © 2024 TerraMetrics



5000 ft

**BEFORE THE
FISH AND GAME COMMISSION
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

ODYSSEUS OLIVER RICHCREEK, Respondent

Agency Case No. 24ALJ16-FGC

OAH No. 2024110643

PROPOSED DECISION

Brian Weisel, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on April 14, 2025, via videoconference from Sacramento, California.

Cooper Wilce, Staff Counsel, represented Nathaniel Arnold (complainant), Chief, Law Enforcement Division, Department of Fish and Wildlife (Department).

Respondent Odysseus Oliver Richcreek appeared and represented himself.

Evidence was received, and the record was held open until April 18, 2025, to allow complainant to submit one additional exhibit. On April 16, 2025, complainant submitted a video recording. That recording is marked as Exhibit 8 and admitted for all purposes. On April 18, 2025, the record was closed, and the matter submitted for decision.

FACTUAL FINDINGS

Jurisdictional Matters

1. On April 1, 2024, the Department renewed respondent's commercial fishing license (license). The license was valid at all times relevant to this matter.
2. On June 14, 2024, complainant signed and thereafter filed the Accusation against respondent. Complaint alleges that during an inspection of respondent's boat on December 9, 2021, more than 1 percent of respondent's catch of Dungeness crabs were undersized. Complainant seeks suspension of respondent's license for one year.
3. Respondent timely filed a Notice of Defense to the Accusation. The matter was set for evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Complainant's Evidence

4. Warden David Walker is a peace officer trusted with law enforcement for the Department. He has worked as a warden for 11 years. His current assignment includes Del Norte County as one of the two assigned marine wardens.
5. Warden Walker described the regulated fishing industry in his assignment area. Specifically, he explained the yearly Dungeness crab fishing process and the corresponding laws and regulations. To maintain sustainability for the crab population, the Department enforces restrictions on commercial crab catches. Pursuant to Fish and Game Code section 8278, caught crabs must be no less than six and one-quarter inches in breadth across the shortest distance through the body from

edge of shell to edge of shell directly from front of points (the "lateral spines"). This size restriction ensures the harvested crabs lived long enough to mate before they were caught. Undersized crabs must be released back into the water until they mature.

6. Crabs are caught using traps or pots placed on the ocean floor. After a few days, the fisherman collects the pots and measures the crabs on the boat. Any undersized crabs must be discarded and returned to the ocean. Legal crabs stay on the vessel in circulated seawater until they are unloaded, still alive, at the dock.

7. To check a crab's size, Warden Walker uses his Department-issued crab gauge (commonly called a "stick") to measure each crab's width. The stick is an inclusive measuring device. If a crab fits within the two prongs of the device with room to spare, the crab is undersized. If the crab touches both edges of the device or is too large for the device to fit, the crab is large enough to keep.

8. The statute allows for a 1 percent "buffer" of the catch to measure below six and one-quarter inches wide. This accounts for crabs that are very close to the size allowance. This buffer also allows for occasional undersized "hitchhiking" crabs that attached to larger crabs in the pot through no fault of the fisherman. Even though 1 percent of the catch may be less than six and one-quarter inches wide, all crabs must measure more than five and three-quarters of an inch wide without exception.

9. On December 9, 2021, Warden Walker conducted a routine inspection of respondent's boat as it docked in Crescent City. He witnessed the crew offloading the crabs at the dock. He conducted a rough visual inspection and suspected a significant number of the crabs were undersized.

10. Warden Walker and his colleague Department Warden Burger informed respondent of their suspicion. Warden Walker allowed respondent to choose one of

his six "totes" of crab that the wardens would officially measure for compliance. The wardens measured each crab in the chosen tote. The total number of crabs in the tote was 346. The wardens found 37 of the crabs to be below the required size, or approximately 10 percent, well above the allowed 1 percent buffer.

11. Based on the high number of undersized crabs, Warden Walker decided to measure all six of respondent's crab totes to confirm the entire catch exceeded the 1 percent buffer. In total, Warden Walker measured the width of 1,869 crabs. He determined 204 of the crabs were undersized, or approximately 10.9 percent of the catch. None of the crabs were less than five and three-quarters of an inch wide.

12. Warden Walker video recorded himself measuring each of the undersized crabs. For each alleged violation, Warden Walker placed the crab in question on a table, attempted to place his stick around the crab, and showed if there was any "wiggle room" between the ends of the gauge and the widest part of the crab. Warden Walker stated that "maybe 20" crabs were very close to the allowable size. Even if all those crabs were not considered undersized, significantly more than 1 percent of respondent's entire catch included undersized crabs.

13. Warden Walker notified respondent of the violation and retained all the crabs. He finished his count when it was late in the day and quite dark outside. The next morning, Warden Walker placed each undersized crab on a tarp on the ground and photographed the entire undersized catch in one area. Warden Walker then stored the crabs in a Department evidence freezer.

Respondent's Evidence

14. Respondent is a third-generation fisherman. He has worked as a commercial fisherman for 32 years with no violations before this allegation. He stated that never kept a "short crab" in his life before this incident.

15. Respondent described the day leading up to the December 9, 2021 inspection. While his crew was bringing in pods to measure the crabs, respondent noticed some crew members were not using their sticks to verify the crab size before placing them in the totes. The crew worked long shifts. They stayed awake approximately 30 hours at a time. Respondent felt his crew was rushing and careless. Respondent stopped the count three separate times and told the crew to use the stick for every measurement. Respondent knew that in their tired state, the crew "eyeballing" the crabs would likely lead to collection of undersized crabs. Respondent acknowledged he is responsible for the actions of his crew. He fired one crew member as soon as the boat returned to shore for inadequate measuring.

16. Respondent admitted some of the crabs in his catch were undersized. He argued that "20-30" counted by the warden were very close to an acceptable size. Respondent reviewed the video and argued that some crabs cannot be verified as too small in the recording. However, respondent agreed that even if all the "close calls" were considered in his favor, his total catch contained undersized crabs in excess of 1 percent.

17. Respondent stated he cares about marine conservation. He lamented that the crabs in his catch died because of their seizure in this investigation. Respondent hoped that the undersized crabs could be returned to the ocean shortly after they were measured instead of being frozen and stored as evidence.

18. After this incident, respondent's work opportunities diminished. The fishing community in Crescent City is small. Respondent gained a reputation as a "baby crab killer." Respondent's contract with the boat at the time of this citation was terminated. Respondent recently injured his thumb and cannot work. His surgery is scheduled for June. He hopes to return to the water for tuna season after that.

Analysis

19. Complainant proved cause to discipline respondent's license. The video recording of Warden Walker's measurements confirmed approximately 204 of respondent's 1,869 crabs were less than six and one-quarter inches in breadth. Both Warden Walker and respondent agreed approximately 20 of the crabs were quite close to the threshold. Even if 20 crabs are subtracted from the undersized count of 204, 184 of 1,869 is still nearly ten percent, far in excess of the 1 percent "buffer."

20. Cause having been established, the Commission must determine the appropriate discipline of respondent's license to adequately protect the public and natural resources. The Commission may revoke, suspend, or cancel the fishing license privileges of a licensee for a violation. (Fish and G. Code, § 7857, subd. (b)(2).) Section 7857 does not provide for any other possible disciplinary actions.

21. The Commission has not developed guidelines regarding the appropriate discipline to impose for misconduct by a commercial fisherman. However, Fish and Game Code section 12154, which concerns appeals of suspended or revoked hunting or sport fishing licenses, describes factors that are useful in determining the appropriate discipline in this case. The factors the Commission considers in such appeals include the nature, circumstances, extent, and gravity of the violations, the

person's culpability for the violations, and the injury to natural resources caused by the violations. (Fish & G. Code, § 12154, subd. (b)(1).)

22. Considering those factors, respondent injured marine resources and damaged the sustainability of Dungeness crab. He credibly testified to knowledge of the importance of verifying his catch's size with the appropriate gauge before bringing the crabs back to shore. Respondent's catch contained a significant number of undersized crabs, approximately 10 percent. Though his crew was tired, it was respondent's responsibility to adequately supervise their measurements.

23. In mitigation, respondent has no other disciplinary history in over 30 years as a fisherman. He fired the offending crew member immediately after returning to shore. He credibly testified about his belief in sustainability and showed remorse for his actions. Though many of his crabs were undersized, none were less than five and three-quarters of an inch wide. Respondent already experienced a reduction in work because of this incident.

24. The primary purpose of administrative license proceedings is to protect the public, and the object of discipline is not to punish the licensee. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817; see also *Pirouzian v. Superior Court* (2016) 1 Cal.App.5th 438, 448-450.) A suspension of respondent's license is warranted to ensure his future compliance. However, one year is unduly punitive given respondent's prior history without discipline. Considering all the evidence, a suspension of 30 days is more appropriate to adequately protect natural resources.

LEGAL CONCLUSIONS

1. The burden of proof in an administrative hearing is on the party bringing the charges. (*Hughes v. Bd. of Architectural Exam'rs* (1998) 17 Cal.4th 763, 789, fn. 9.) Because no law requires otherwise, and this case does not involve discipline of a professional license, the standard is proof by a preponderance of the evidence. (Evid. Code, § 115; *Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-918.) Evidence that is deemed to preponderate must amount to "substantial evidence." (*Weiser v. Bd. of Retirement* (1984) 152 Cal.App.3d 775, 783.) To be "substantial," evidence must be reasonable in nature, credible, and of solid value. (*In re Teed's Estate* (1952) 112 Cal.App.2d 638, 644.)

2. The Commission may suspend, revoke, or cancel commercial fishing privileges for violations of the Fish and Game Code or its corresponding regulations. (Fish and G. Code, § 7857, subd. (b)(2).)

3. Fish and Game Code section 8278, subdivision (a), states:

Except as otherwise provided, no Dungeness crab less than six and one-quarter (6 ¼) inches in breadth, and no female Dungeness crab, may be taken, possessed, bought, or sold, except that not more than 1 percent in number of any load or lot of Dungeness crabs may be less than six and one-quarter (6 ¼) inches in breadth but not less than five and three-quarters (5 ¾) inches in breadth.

4. Fish and Game Code section 86 states:

“Take” means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

Cause for Discipline

5. As discussed in the Factual Findings above, complainant proved by a preponderance of the evidence that respondent took crabs sized less than six and one-quarter inches in breadth. Complainant further proved that respondent’s undersized crabs exceeded 1 percent of his entire catch. Therefore, cause exists to discipline respondent’s license.

6. Considering the Factual Findings and Legal Conclusions as a whole, a suspension of respondent’s license is warranted. A 30-day suspension will adequately protect natural resources.

ORDER

Respondent Odysseus Oliver Richcreek’s commercial fishing license is
SUSPENDED for 30 days.

DATE: May 15, 2025

Brian Weisel
Brian Weisel (May 15, 2025 15:37 PDT)

BRIAN WEISEL

Administrative Law Judge

Office of Administrative Hearings



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 P.O. Box 944209
 Sacramento, CA 94244-2090
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



May 27, 2025

California Fish and Game Commission
 P.O. Box 944209
 Sacramento, CA 94244-2090

Revision of Proposed Decision, *In the Matter of the Accusation Against Odysseus Oliver Richcreek* (Agency Case No. 24ALJ16-FGC, OAH No. 2024110643)

Dear Commissioners:

The Department respectfully requests the Fish and Game Commission ("Commission") revise the Proposed Decision issued *In the Matter of the Accusation Against Odysseus Oliver Richcreek* (Agency Case No. 24ALJ16-FGC, OAH No. 2024110643; "Proposed Decision").

On April 14, 2025, the Office of Administrative Hearings, on behalf of the Commission, held a hearing in which the Department of Fish and Wildlife ("Department") presented evidence that Mr. Odysseus Oliver Richcreek violated Fish and Game Code § 8278(a) ("Section 8278") by possessing 204 undersized Dungeness crab out of a load of 1869, 10.91% of the load. The Administrative Law Judge ("ALJ") found the Department proved, by a preponderance of the evidence, that Mr. Richcreek violated Section 8278.¹ In the Proposed Decision, the ALJ recommends a 30-day suspension of Mr. Richcreek's Commercial Fishing License ("license") to "adequately protect natural resources."²

As laid out in the ALJ's findings, Mr. Richcreek's culpability is undisputable. He was the skipper of a commercial Dungeness crab vessel and took 204 undersized Dungeness crabs from the ocean. Mr. Richcreek blamed his crew for not measuring the crab adequately, but as the skipper, he is responsible for their actions pursuant to Fish and Game Code section 7857(b)(3).³

¹ Proposed Decision Page 9, ¶ 5.

² Proposed Decision Page 9, ¶ 2.

³ Fish and Game Code section 7857(b)(3) states: "(b) The commission, after notice and opportunity for hearing, may suspend, revoke, or cancel commercial fishing privileges for a period of time to be determined by the commission for the following reasons: (3) A violation of any federal law relating to the fishery for which the license, permit, or other entitlement was issued by the licensee, permittee, person holding the entitlement, or their agent, servant, employee, or person acting under the licensee's, permittee's, or entitled person's direction or control."

Unlike in Oregon and Washington, California allows commercial Dungeness fishermen to have 1% of their load of Dungeness be undersized as long as the crab are over 5 ¾ inches.⁴ If Richcreek possessed 1% undersized Dungeness, he would have had 18 in his load of 1869. Instead, he had 204, one away from 11 times the allowable amount of undersized Dungeness crab. The take of 204 undersized Dungeness crab impacts the fishery as these crab do not have the opportunity to grow and reproduce, resulting in fewer crab for commercial fishermen to harvest.

But despite the ALJ's finding of Mr. Richcreek's culpability for the violation, the ALJ noted in the proposed decision that they had little guidance on what discipline is appropriate in an undersized crab case due to the lack of precedential decisions specific to these violations. The ALJ stated, "The Commission has not developed guidelines regarding the appropriate discipline to impose for misconduct by a commercial fisherman,"⁵ leading him to use Fish and Game Code section 12154, concerning appeals of suspended or revoked hunting or sport fishing licenses, to determine how long of a suspension period should be levied.⁶ Instead, they looked to a statute that is only applicable to hunting or sport fishing related violations. Section 12154 is not an appropriate guide in this case, as Mr. Richcreek is a commercial fisherman that is held to a higher standard than sport fishermen.

Accordingly, the 30-day suspension of Mr. Richcreek's license is not sufficient for three reasons. First, a 30-day suspension beginning in June will not adequately protect California's natural resources because it is not timely to deter the behavior during the intended fishing season. The Dungeness crab season is closed and will not open until the winter. Given this issue, the Department will generally ask for a one-year suspension for these types of violations. Second, Mr. Richcreek's take of 204 undersized Dungeness crab, nearly 11 times the amount authorized in Section 8278, is a serious violation that should be treated as such, and the length of the discipline does not match the seriousness of the violation and is insufficient to protect the Dungeness crab fishery. Third, while there are no Commission guidelines regarding the appropriate discipline, there is an analogous Commission designated as precedential – *In the Matter of the Accusation Against Gerald Wetle* (2017) that provides guidance. In *Wetle*, the respondent left 49 crab traps in the ocean after season close, with 318 crabs in the traps, a similar number to the amount of undersized crab Mr. Richcreek was offloading to the Fish Business. The ALJ in *Wetle* stated, "The violations were egregious... Respondent's conduct presented a risk of harm to the Dungeness crab fishery and

⁴ Fish and Game Code section 8278(a).

⁵ Proposed Decision Page 6, ¶ 21.

⁶ Fish and Game Code section 12154 states in part: "The commission shall consider at least the nature, circumstances, extent, and gravity of the person's violations, the person's culpability for the violations, and the injury to natural resources by the violations, and may restore a person's hunting or sport fishing license or permit privileges."

unfairly advantaged respondent in the marketplace. A one-year suspension ... is warranted for the protection of the public." Thus, imposing a 30-day suspension in this matter would be inconsistent with discipline imposed by the Commission in a similar matter. (The Department intends to bring decisions on undersized catch to the Commission for designation as precedential decisions to provide guidance to ALJs in the future.)

Because a 30-day suspension does not adequately protect the resource, the Department requests the Commission revise this Proposed Decision, pursuant to Title 14, section 746, subdivision (a)(11)⁷ to protect California's natural resources. The Department has prayed for and proposed a one-year suspension. This path would adequately protect the resource by ensuring Mr. Richcreek cannot participate in the next commercial Dungeness crab season. Alternatively, a 3-month suspension starting upon the 2025-2026 commercial Dungeness crab season opening date would be sufficient. The Department requests the Commission revise the Proposed Decision in a manner they find appropriate to effectuate deterrence from taking undersized catch.

Sincerely,

DocuSigned by:

AA968532644A4EB...

Nathaniel Arnold
Deputy Director
Chief of the Law Enforcement Division

⁷ Title 14, section 746, subdivision (a)(11) authorizes the Commission to "adopt, revise or reject the proposed decision."

**BEFORE THE
FISH AND GAME COMMISSION
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

JERRY LYNN WILLETT,

Respondent

Agency Case No. 24ALJ35-FGC

OAH No. 2024120192

PROPOSED DECISION

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on January 22, 2025.

William Schmelter, Staff Counsel, Department of Fish and Wildlife (Department), represented complainant Nathaniel Arnold, Chief of the Law Enforcement Division of the Department.

Respondent Jerry Lynn Willett represented himself.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on January 22, 2025.

SUMMARY

Complainant requests that the Fish and Game Commission (Commission) suspend respondent's commercial fishing license for two years for three alleged violations of Fish and Game Code statutes and regulations. Respondent admits the violations but contends they were inadvertent and do not justify a suspension. The evidence establishes the charged violations, and respondent has not presented sufficient evidence of mitigating circumstances or rehabilitation to justify a lesser disciplinary action than the requested suspension. Therefore, complainant's request for a two-year suspension is granted.

FACTUAL FINDINGS

Background and Procedural History

1. At all times relevant to this case, respondent held a Department-issued commercial fishing license. During the time period at issue, the license was issued or renewed on March 18, 2021; March 30, 2022; and February 28, 2023. The license remained in full force and effect as of the date of the hearing. Respondent has no prior license disciplinary history with the Commission or the Department.

INCIDENT IN 2021

2. On June 22, 2021, Department Officer Cameron Roth was on uniformed patrol of Port San Luis in San Luis Obispo County. Roth observed a commercial fishing vessel headed towards the Port San Luis Pier, and when it docked, Roth observed respondent and crew members preparing to offload fish to a local fish receiver. Roth identified respondent as the owner of the vessel and asked if respondent had caught

any fish. Respondent stated he had, and Roth asked to see all of respondent's paperwork to verify the catch. A crew member provided the required documentation, which included licenses, landing receipts, and a boat registration.

3. Once the paperwork was verified, Roth monitored the fish offloaded from the vessel. All fish landed were within accepted cumulative limits for the two-month period from May through June 2021, except for vermilion rockfish. According to prior landing receipts for other trips, respondent had already landed 323 pounds of vermilion rockfish over five commercial fishing trips during the period. On this trip, respondent landed another 144 pounds of vermilion rockfish, which increased his cumulative total for the period to 467.2 pounds. This put respondent 67.2 pounds over the 400-pound cumulative limit for vermilion rockfish for the period. Roth cited and released respondent for the violation.

INCIDENT IN 2022

4. On March 25, 2022, Roth was on uniformed boat patrol offshore of Port San Luis and observed a commercial fishing vessel taking rockfish. On initial contact, Roth introduced himself and recognized respondent as the boat captain. Roth asked respondent if his trip was commercial or sport, and respondent stated the trip was commercial.

5. Roth asked respondent if there were any fish on board, and respondent replied there were and pointed to a live well, where Roth observed multiple species of rockfish. Roth then asked respondent for all his licenses and documentation, and respondent was able to provide his licenses and two landing receipts. Roth asked respondent how many times he had fished commercially during the two-month cumulative limit period of March through April 2022, and respondent stated he had

fished commercially maybe seven or eight times. Roth asked respondent where the landing receipts were for those other trips, and respondent stated they were in his truck.

6. Respondent's statements suggested he was in violation of the requirement that all landing receipts for rockfish must remain on board a commercial fishing vessel for the current cumulative limit period and for 15 days thereafter. Roth investigated further and determined respondent only had one additional landing receipt, dated March 19, 2022, required to be on board at that time, not five or six as suggested by respondent's statements. Roth cited and released respondent for the violation.

INCIDENT IN 2023

7. On April 7, 2023, Department Officer Herbert LeBlanc was on skiff patrol offshore of Avila Beach, California. LeBlanc observed the commercial fishing vessel "Rusty Nail" with two people on it, who were later identified as respondent and Anthony Micheal Ronald Pinedo. LeBlanc approached the vessel, introduced himself as an officer, and asked respondent and Pinedo if they were fishing for sport or commercially. Respondent replied they were fishing commercially. LeBlanc also asked what respondent and Pinedo were fishing for, and they said rockfish.

8. LeBlanc asked to see respondent's and Pinedo's commercial fishing licenses, permits, and landing receipts for the two-month cumulative limit period from March through April 2023. Respondent showed LeBlanc his 2023 commercial fishing license, boat registration, and near shore permit, and Pinedo showed LeBlanc his 2023 commercial fishing license. LeBlanc asked them if this was their first trip of the period,

and respondent replied, "No I fished one time." Respondent showed LeBlanc a landing receipt for April 6th, 2023.

9. LeBlanc looked up all the landings by respondent and Pinedo on a Department website, which showed that respondent had three more landings during the cumulative limit period. The landings were on March 8, 9, and 16, 2023. Respondent was able to find and provide the landing receipts for March 8 and 9, but not for March 16. Pinedo also did not have landing receipts for March 8 and 9. LeBlanc cited respondent and Pinedo for not having all required landing receipts on board.

ACCUSATION

10. On June 18, 2024, complainant filed an Accusation requesting that the Commission suspend respondent's commercial fishing license for two years based on the violations that Roth and LeBlanc identified. Respondent filed a notice of defense dated July 16, 2024. On October 4, 2024, complainant filed a request with OAH to set the matter for hearing.

Hearing

11. Roth and LeBlanc testified regarding their encounters with respondent, and they also prepared investigative reports of the incidents that were admitted into evidence without objection. The testimony and reports establish the facts about the incidents set forth above.

12. Respondent did not contest the violations, but he testified there are explanations for them. Regarding the incident in 2021, respondent explained "the captain running the boat" missed a landing receipt, which resulted in respondent landing more vermilion rockfish during the cumulative two-month period than he

thought. Regarding the incident in 2022, respondent explained he did not have the missing landing receipt on board because he used it to apply for an insurance discount. Regarding the incident in 2023, respondent explained he had to take the missing landing receipt to court for a case, and the receipt was in his truck on the day of the incident. Respondent testified he offered to get it from his truck for LeBlanc, but LeBlanc nonetheless cited respondent for not having it on board.

13. Considering the evidence, there is no dispute that respondent committed the violations. The only material dispute is what disciplinary action to take, if any. Complainant contends a two-year suspension is justified; respondent contends no disciplinary action is warranted. The facts support complainant's contention, as described below.

LEGAL CONCLUSIONS

Legal Standards

1. Fish and Game Code section 7857, subdivision (b) identifies three grounds on which the Commission may suspend, revoke, or temporarily cancel commercial fishing privileges. First, the Commission may take one of those actions if "[t]he person was not lawfully entitled to be issued the license, permit, or other entitlement." (Fish & Game Code, § 7857, subd. (b)(1).) Second, the Commission may take action for "[a] violation of this code, the terms of the permit or other entitlement, or the regulations adopted pursuant thereto, by the licensee, permittee, person holding the entitlement, or their agent, servant, employee, or person acting under the licensee's, permittee's, or entitled person's direction or control." (*Id.*, subd. (b)(2).) And third, the Commission may take action for "[a] violation of any federal law relating to

the fishery for which the license, permit, or other entitlement was issued by the licensee, permittee, person holding the entitlement, or their agent, servant, employee, or person acting under the licensee's, permittee's, or entitled person's direction or control." (*Id.*, subd. (b)(3).)

2. Relying on Fish and Game Code section 7857, subdivision (b)(2), complainant requests that the Commission suspend respondent's commercial fishing privileges for two years for three alleged violations of Fish and Game Code statutes and regulations. As the party seeking relief, complainant bears the burden of proving the alleged violations by a preponderance of the evidence. (Evid. Code, §§ 115, 500.) The more exacting "clear and convincing evidence" standard of proof used in disciplinary cases involving professional licenses is inapplicable because respondent's license and permits are nonprofessional licenses. (See *Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917.) Professional licenses have extensive education, training, and testing requirements (*ibid.*); respondent's commercial fishing license does not. All persons over 16 years of age who pay the required fees are eligible for that license. (Fish & Game Code, § 7852.) Therefore, the preponderance of the evidence standard of proof applies.

Analysis

CAUSES FOR DISCIPLINE

3. The Accusation includes three causes for discipline, one for each of the violations identified during the incidents in 2021, 2022, and 2023. The first cause for discipline concerns respondent exceeding the 400-pound cumulative limit for vermilion rockfish for the two-month period from May through June 2021. The second

and third causes for discipline concern respondent's failure to have all required landing receipts on board in 2022 and 2023, respectively.

4. Complainant proved all three causes for discipline. Regarding the first cause for discipline, Department regulations incorporate a federal cumulative landing limit that at the time was 400 pounds of vermilion rockfish during a two-month period in the area where respondent fished. (Cal. Code Regs., tit. 14, § 189, subd. (a); 50 CFR §§ 660.11, 660.312(a)(1); see also Exhibit 4, p. A30, line 20 [listing 400-pound limit for the area in 2021].) Respondent exceeded that cumulative limit by 67.2 pounds.

5. Regarding the second and third causes for discipline, at the time of the violations, Fish and Game Code section 8046.1 required any person landing groundfish subject to federal groundfish regulations adopted pursuant to the Magnuson Fishery Conservation and Management Act (16 U.S.C. § 1801 et seq.) to "keep a copy of the landing receipt on board the fishing vessel throughout, and for 15 days following, each period for which cumulative landings by individual vessels are limited." (Former Fish & Game Code, § 8046.1, amended by Stats. 2023, ch. 876, § 10, eff. Jan. 1, 2024.) Respondent violated this requirement in 2022 and 2023 by not having a required landing receipt on board the vessel during each incident.

6. Respondent contends the violations were inadvertent mistakes, but the statutes and regulations do not state the charged violations must be knowing or intentional. Inadvertence and mistake are therefore not defenses to the violations. Accordingly, the Commission may take disciplinary action due to the violations under Fish and Game Code section 7857, subdivision (b)(2).

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DISCIPLINARY ACTION

7. With three proven causes for discipline, the Commission must determine the appropriate disciplinary action. Neither the Department nor the Commission has developed guidelines regarding the disciplinary action to impose for misconduct by a commercial fisherman. But Fish and Game Code section 12154, which concerns appeals of suspended or revoked hunting or sport fishing licenses, describes factors that are useful in determining the appropriate discipline in this case. The factors the Commission considers in such appeals include the nature, circumstances, extent, and gravity of the violations, the person's culpability for the violations, and the injury to natural resources caused by the violations. (Fish & Game Code, § 12154, subd. (b)(1).)

8. The primary purpose of administrative license proceedings is to protect the public, and the object of discipline is not to punish the licensee. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817; see also *Pirouzian v. Superior Court* (2016) 1 Cal.App.5th 438, 448-450.) Consideration of the factors described in Fish and Game Code section 12154 in this case is reasonable to evaluate public protection, specifically the protection of the public's natural resources. Respondent's taking of vermilion rockfish in excess of cumulative limits in 2021 injured marine resources. Respondent also violated landing receipt requirements in 2022 and 2023 designed to ensure compliance with commercial fishing laws and limits. The number and repeat nature of the violations are aggravating factors, and respondent is personally culpable for the violations even accepting his testimony that they were inadvertent mistakes.

9. Respondent has no other license disciplinary history, which is a mitigating factor. (*Yakov v. Board of Medical Examiners* (1968) 68 Cal.2d 67, 71.) In addition, almost two years have elapsed since respondent's most recent violation, and "[t]he evidentiary significance of . . . misconduct is greatly diminished by the passage

of time and by the absence of similar, more recent misconduct. [Citations.]” (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) But apart from the passage of time, respondent presented little evidence of rehabilitation. He testified himself but called no other witnesses to describe his rehabilitation efforts, current commercial fishing practices, or present character. Overall, his evidence of mitigating circumstances and rehabilitation is too limited to support a lesser disciplinary action than the requested two-year suspension, which is warranted to protect public resources.

ORDER

Respondent Jerry Lynn Willett’s commercial fishing license is suspended for two years.

DATE: 02/21/2025



Thomas Heller (Feb 21, 2025 10:45 PST)

THOMAS HELLER

Administrative Law Judge

Office of Administrative Hearings

**BEFORE THE
FISH AND GAME COMMISSION
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

DAVID JAMES BITTS, Respondent

Agency Case No. 24ALJ36-FGC

OAH No. 2024100664

PROPOSED DECISION

Matthew S. Block, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on March 26, 2025, by videoconference from Sacramento, California.

Crystal D'Souza, Staff Counsel, represented Nathaniel Arnold (complainant), Acting Chief, Law Enforcement Division, Department of Fish and Wildlife (Department).

Matthew L. Emrick represented David James Bitts (respondent), who was present.

Evidence was received, the record closed, and the matter submitted for decision on March 26, 2025. Respondent subsequently sought to introduce additional evidence, none of which was considered in this decision because the record had already closed.

FACTUAL FINDINGS

Jurisdictional Matters

1. On January 12, 2023, the Department issued respondent a commercial fishing retail license (retail license). On March 12, 2024, the Department renewed respondent's commercial fishing license (license), and his Dungeness crab vessel permit (vessel permit) for his boat, Elmarue. The license, retail license, and vessel permit were valid at all times relevant to this matter.

2. On June 25, 2024, complainant signed and thereafter filed the Accusation against respondent. Complainant alleges that during an inspection on January 21, 2021, more than one percent of respondent's catch of Dungeness crabs was less than six and one-quarter inches in breadth. Complainant seeks a decision suspending respondent's vessel permit for three months and taking any other and further action as may be deemed just and proper.

3. Respondent timely filed a Notice of Defense to the Accusation. The matter was set for evidentiary hearing before an ALJ of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Complainant's Evidence

4. On January 21, 2021, Department Officers Brent Chase, Tyler Brassfield, and Michael Hampton were conducting patrol operations on the Pacific Ocean offshore of Clam Beach in Humboldt County. They were traveling in a marked patrol boat and wearing distinctive uniforms. All three officers testified at hearing.

5. At approximately 11:00 a.m., they encountered respondent on Elmarue pulling commercial crab pots from the water. They decided to verify he was properly licensed and to inspect his catch. Officers Hampton and Brassfield boarded respondent's boat and confirmed he had a valid license to fish commercially. They then proceeded to inspect the crabs respondent had already caught. There were no crabs in the holding tank. However, there were 41 crabs in the sorting box. A sorting box is a container on the deck where crabs from the crab pots are temporarily placed for sorting and measuring before they are deposited into the holding tank.

6. The Fish and Game Code requires that no more than one percent of a load of Dungeness crab be less than six and one-quarter inches in breadth across the shell. The officers were unable to determine if any of the crabs respondent had on board were undersized simply by looking at them, so Officer Hampton used his Department-issued crab gauge to measure each one. He found that 26 of the 41 crabs were less than six and one-quarter inches in breadth across the shell. He used respondent's crab gauge to confirm the measurements and used his Department-issued phone to take photographs of every crab he determined to be undersized.

7. When the officers questioned respondent about the 26 undersized crabs, he told them he was fishing by himself, and he felt it was unreasonable to expect him to measure each crab immediately after pulling it from the water. He pulled between 20 and 25 crab pots prior to the officers' inspection, averaging between three and six crabs per pot. He told the officers he planned to sort and measure the crabs after retrieving his crab pots and return any undersized crabs to the ocean.

8. Officer Hampton testified that the law affords fishermen a "reasonable" amount of time to sort their catch, but the determination of how much time is reasonable is left to the discretion of investigating officers. At hearing, the officer

described the crabs in respondent's sorting box as bubbling, distressed and lethargic. However, they omitted these details from the investigation report. Respondent told the officers the crabs had been in the sorting box for approximately one hour, which Officer Brassfield, in consultation with Officer Hampton, determined was unreasonable.

9. After his interaction with respondent on January 21, 2021, Officer Hampton was issued a new phone. When that happened, he lost all the pictures he had taken of the crabs in respondent's sorting box.

Respondent's Evidence

10. Respondent testified at hearing. He is 76 years old and resides in McKinleyville, California. He has worked as a commercial fisherman for over 50 years and typically fishes for Dungeness crab using a 40-pot string.

11. Respondent admits that some of the 41 crabs he caught before the officers boarded his boat were undersized and needed to be returned to the water. When fishing alone, his practice is to unload most, if not all, the crab pots on the string, before sorting and measuring his catch. He intended to follow that practice on January 21, 2021, but the officers began inspecting the catch before he had the opportunity to sort. Respondent disputes that the crabs inspected by the officers were in distress, as they were not in direct sunlight and there was enough water in the sorting box to sustain them.

12. Respondent believes that as written, the law prohibiting fishermen from catching undersized crabs is impossible to follow, because a fisherman cannot know if a crab is undersized before pulling it from the water and taking possession of it to measure. He also takes issue with officers being allowed to determine what is a reasonable time to sort a catch on a case-by-case basis.

13. David Helliwell testified at hearing on respondent's behalf. Mr. Helliwell has been a commercial fisherman for 55 years and has used a sorting box to measure crabs his entire career. He explained that the typical practice is to wait to sort crabs until multiple pots have been emptied into the sorting box. It is not uncommon to have crabs in a sorting box for an hour, and being out of the water for that amount of time does not harm the crabs. According to Mr. Helliwell, the Department has not issued any guidance for what a reasonable time is to wait to sort crabs once they are emptied into the sorting box.

14. Kevin Pinto also testified at hearing on respondent's behalf. Mr. Pinto has been a commercial fisherman for 48 years and now fishes exclusively for Dungeness crab. He has used a sorting box to measure crabs his entire career. He has kept crabs in the sorting box for up to an hour and a half, and it did not harm the crabs. Mr. Pinto has fished alone on occasion. However, he explained that it is somewhat unusual for a fisherman to fish alone for Dungeness crab because of the time it takes for one person to pull the pots from the water, empty them into the sorting box, and sort and return any undersized crabs to the ocean.

Analysis

15. Complainant bears the burden of proving the cause for discipline alleged in the Accusation by a preponderance of the evidence. He alleges that on January 21, 2021, respondent violated Fish and Game Code section 8278, subdivision (a), because more than one percent of his Dungeness crab load was undersized. Complainant established, and respondent does not dispute, that 26 of the 41 crabs in respondent's sorting box when the officers boarded were undersized. Nonetheless, for the reasons set forth below, complainant has failed to meet his burden of proof, and the Accusation must be dismissed.

16. Statutes like Fish and Game Code section 8278 have been adopted to ensure that commercial fishing operations are carried out in an environmentally sustainable manner. The purpose of the law is straightforward. Its practical application and enforcement are not.

17. Officer Hampton testified that Fish and Game Code section 8278 affords Dungeness crab fishermen a reasonable time to sort their catch before potentially running afoul of crab size limitations. While such an allowance makes sense, it is not codified in section 8278 or any of the other statutes cited in the Accusation. Equally troubling is the notion that law enforcement officers possess unilateral, unbridled discretion to determine how much time is reasonable on a case-by-case basis.

18. Even assuming law enforcement officers do hold that discretion, complainant did not establish that respondent unreasonably delayed sorting his catch. The law requires commercial fishermen to determine whether any Dungeness crabs in their catch are undersized and return any undersized crabs to the ocean. Making that determination necessitates taking the time to measure the crabs. Respondent credibly testified about his fishing and sorting process. Other fisherman credibly testified to the same process. There is no authority supporting the position that one hour is unreasonable, nor is there any scientific evidence that keeping a crab in a sorting box for an hour is detrimental to its health.

19. When all the evidence is considered, respondent's explanation for having 26 undersized crabs on board because he had yet to sort and measure them was reasonable. Complainant failed to produce any physical evidence that the crabs were in poor condition, or that their condition was attributable to an unreasonable delay. Consequently, the Accusation must be dismissed.

LEGAL CONCLUSIONS

1. The burden of proof in an administrative hearing is on the party bringing the charges, here the Department. (*Hughes v. Bd. of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) Because no law requires otherwise, and this case does not involve discipline of a professional license, the standard is proof by a preponderance of the evidence. (Evid. Code, § 115; *Imports Performance v. Dept. of Consumer Affairs, Bur. of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-918.) This standard requires evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

2. The Fish and Game Commission may suspend, revoke, or cancel commercial fishing privileges for violations of the Fish and Game Code or its corresponding regulations. (Fish and G. Code, § 7857, subd. (b)(2).)

3. The Fish and Game Commission may suspend, revoke, or cancel commercial fish business privileges for violations of the Fish and Game Code or its corresponding regulations. (Fish and G. Code, § 8032.5, subd. (c)(2).)

4. Fish and Game Code section 8278, subdivision (a), provides:

Except as otherwise provided, no Dungeness crab less than six and one-quarter (6 1/4) inches in breadth, and no female Dungeness crab, may be taken, possessed, bought, or sold, except that not more than 1 percent in number of any load or lot of Dungeness crabs may be less than six and one-quarter (6 1/4) inches in breadth but not less than five and three-quarters (5 3/4) inches in breadth.

5. Fish and Game Code section 86 states:

“Take” means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

Cause for Discipline

6. Based on the Factual Findings and Legal Conclusions as a whole, complainant failed to prove the alleged cause for discipline by a preponderance of the evidence. Therefore, cause does not exist to suspend respondent’s Dungeness crab vessel permit, and the Accusation must be dismissed.

ORDER

The Accusation against respondent David James Bitts is DISMISSED.

DATE: April 21, 2025

Matthew Block

MATTHEW S. BLOCK

Administrative Law Judge

Office of Administrative Hearings



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
P.O. Box 944209
Sacramento, CA 94244-2090
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



May 11, 2025

California Fish and Game Commission
P.O. Box 944209
Sacramento, CA 94244-2090

Rejection of Proposed Decision, *In the Matter of the Accusation Against David James Bitts* (Agency Case No. 24ALJ36-FGC, OAH No. 2024100664)

Dear Commissioners:

I respectfully request that you reject the Proposed Decision issued *In the Matter of the Accusation Against David James Bitts* (Agency Case No. 24ALJ36-FGC, OAH No. 2024100664; "Proposed Decision"), which proposes dismissing the Accusation against David James Bitts ("Bitts").

On March 26, 2025, the Office of Administrative Hearings on behalf of the Commission, held a hearing in which the Department of Fish and Wildlife ("Department") presented evidence that Bitts violated Fish and Game Code § 8278(a). Although it is undisputed that Respondent possessed undersized crab and the Proposed Decision states "Respondent admits that some of the 41 crabs he caught before the officers boarded his boat were undersized and needed to be returned to the water"¹, the Proposed Decision surprisingly concludes that the Department failed to meet its burden of proof to prove the violation. This conclusion appears to stem from the Administrative Law Judge's confusion about how wildlife officers exercise discretion in determining the reasonable amount of time to sort Dungeness crab. However, there is no material dispute that Bitts had undersized crab in his possession in excess of the 1% allowed by Fish and Game Code section 8278(a) and failed to immediately sort his catch as required.

The Proposed Decision should be rejected for three reasons. First, the Administrative Law Judge ("ALJ") erred in requiring an additional element of proof not found in statute or regulation. Second, the Proposed Decision excludes key evidence and admissions that Bitts' failure to sort Dungeness crab immediately was unreasonable. Lastly, the Proposed Decision, if adopted, would undermine the Department's ability to enforce fish and wildlife laws.

The Proposed Decision places an uncoded and contradictory burden on the Department to prove that a Dungeness crab fisherman did not sort their catch in a reasonable amount of time. The Proposed Decision recognizes that reasonableness is

¹ Proposed Decision ¶ 11.

not codified anywhere, and instead solely relies on a small portion of the testimony of Warden Michael Hampton ("Warden Hampton") that the law affords fisherman a reasonable amount of time to sort their catch.² However, the Commission has adopted clarifying regulations that state, "crustaceans less than the legal minimum size...must be immediately returned to the water from which they were taken," (emphasis added).³ The Department has also issued the Commercial Dungeness Crab Fishery Sorting Box Procedures - Frequently Asked Questions ("FAQs") guidance dated March 10, 2022, which is consistent with the regulation and states that catch must be sorted (measured) immediately after removing the trap from the water.⁴ The ALJ ignored the bulk of the testimony regarding the significance of reasonable time to sort the catch, which is primarily used to determine how to address a violation i.e. warning letter, formal complaint, etc., rather than whether there is a violation. In determining reasonableness, the ALJ concludes that an hour is a reasonable amount of time, but this contradicts the clarifying regulation and guidance from the Department. As such, it was inappropriate to find that the Department did not meet its burden of proof based on how much time is reasonable to sort the catch because the law requires catch be sorted immediately.

Even if the Department had a burden to show that the catch was not sorted in a reasonable amount of time, the Proposed Decision omits key evidence and admissions by Bitts and his witnesses. During the inspection, Bitts initially stated it was unreasonable to expect him to sort the crab immediately after pulling the trap.⁵ But, when questioned about the number of crab he was catching per trap (3-6) during the inspection on January 21, 2021, he admitted it was reasonable to immediately sort the crab.⁶ Furthermore, during the hearing Bitts testified that after the inspection by the Department he started measuring his catch immediately after bringing up the trap and it was not an unreasonable expectation. The Proposed Decision also misstates Warden Hampton's testimony that the officers were unable to determine if any of the crabs were undersized by sight.⁷ Warden Hampton testified that some were undersized by sight, but standard practice during an inspection was to measure all the crab. Bitts' own witnesses testified that depending on the number of Dungeness crab in the trap you would sort as you go. There was also no indication that Bitts had any intention of sorting the crab until right before he landed his catch. The administrative law judge fails to include this key evidence and admissions in the Proposed Decision and wrongly concludes that the Department failed to meet its burden of proof. There was no

² Proposed Decision ¶ 17.

³ 14 CCR § 1.62.

⁴ Bitts' attorney attempted to submit the FAQs as evidence in the case, but as the Proposed Decision states it was not admitted as evidence. However, it was referenced during the Hearing and in questioning of the Wardens.

⁵ Respondent's Exhibit 6, page 3.

⁶ Respondent's Exhibit 6, page 3. Warden Tyler Brassfield also testified to the contents in the report, including Bitts' statement that it was reasonable to sort the crab immediately after emptying the trap.

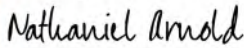
⁷ Proposed Decision ¶ 6.

material dispute between the parties that Bitts failed to sort the crab in a reasonable amount of time.

Lastly, the Commission's adoption of the Proposed Decision would be detrimental to the Department's efforts to enforce Fish and Game Code §8278(a) and other laws by encouraging some fishers to promote spurious arguments and excuses for their violations. It is well accepted that there is inherent discretion in enforcement decisions by an agency.⁸ The Department's officers must assess if the violation can be supported given the totality of all the facts and circumstances. Warden Tyler Brassfield and Warden Hampton testified regarding all the factors they took into consideration that led to the issuance of a formal complaint and subsequent Accusation in this case rather than a warning letter. That testimony was then taken out of context with a narrow focus on one uncoded aspect, reasonable time to sort catch, to justify the Proposed Decision.⁹ Adopting the Proposed Decision would send a signal to all fisheries that they can raise any host of issues they deem as reasonable fishing practices to avoid consequences for violations. As in this case, Bitts first characterized this as a prohibition on the use of sorting boxes and then as an issue with the condition of the crab and reasonable time to sort the catch. Bitts has convoluted what is a straightforward violation of Fish and Game Code §8278(a), where more than 50% of his load was undersized, into other non-relevant factors not found in the statute or regulation. The Proposed Decision undermines the Department's enforcement efforts by stretching the law to give credibility to irrelevant issues.

Based on the foregoing, I respectfully request that the Commission reject the Proposed Decision in its entirety pursuant to Title 14, section 746, subdivision (a)(11), which authorizes the Commission to "adopt, revise or reject the proposed decision," and suspend Bitts' Dungeness Crab Vessel Permit for 3 months with the suspension to begin at the start of the season.

Sincerely,

DocuSigned by:

 AA968532644A4EB...

Nathaniel Arnold
 Deputy Director
 Chief of the Law Enforcement Division

⁸ See *Hicks v. Bd. Of Supervisors*, 69 Cal.App.3d 228, at 241-242; describing prosecutorial discretion which includes investigation and gathering of evidence as inseparable from prosecutorial function.

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May 28, 2025

California Fish and Game Commission
P. O. Box 944209
Sacramento, CA 94244-2090

RE: Adoption of Proposed Decision – David Bitts [OAH 2024100664]

Dear Commissioners:

On behalf of David Bitts, this office respectfully requests that the Commission **adopt** and **approve** the Proposed Decision in the matter of the Accusation Against David James Bitts, DFW Case Np. 24Alj36-FGC/OAH No. 20244100664 (“Decision”) as further described below..

Introduction

The Decision in this matter should be adopted. The Decision is well-reasoned, based on applicable law and evidentiary principles, and supported by the record. The Decision and the record demonstrate the Department of Fish and Wildlife (DFW) failed to provide evidence sufficient to support the Accusation.

Even if certain evidence “may” have potentially been in DFW’s favor, or contradictory as DFW contends in its May 11, 2025 letter to the Commission, there is a strong presumption under the law that a judge’s factual findings (in both courts and administrative proceedings) are correct. *Fukuda v. City of Angels* (1999) 20 Cal.4th 805.¹ Most critically, the DFW **lost** material evidence exculpatory to Mr. Bitts, which is enough to support the dismissal in this matter.

¹ As a rule, “[t]rial courts and juries are better situated to resolve questions of fact. . .” *People v. Cromer* (2001) 24 Cal.4th 889, 893-894; *Crocker National Bank v. City and County of San Francisco* (1989) 49 Cal.3d 881, 888.

The DFW failed to meet its burden of proof and preserve exculpatory evidence

Applicable legal principles support the dismissal of the Accusation. The DFW bears the burden of proof in this matter as the agency filing the “Accusation.”² Due process and the right to a fair trial under the Constitution create an affirmative duty by the DFW to disclose and **preserve** exculpatory evidence that would raise a reasonable doubt about an accused’s guilt. *California v. Trombetta*, 467 U.S. 479 (1984); *People v. Hitch* (1974) 12 Cal. 3d 641, 649, 652. Where a law with potential criminal sanctions is unclear or ambiguous, the law must be interpreted in the Defendant’s favor. *Keeler v. Superior Court* (1970) 2 Cal.3d 619, 631. All these legal principles apply in this matter, and support the dismissal as further discussed below.

During the hearing in this matter, the Wardens testified that they did not cite Mr. Bitts for using a sorting (or dump) box. Rather, the Wardens acknowledged that at the time of the incident, the DFW did not consider the use sorting boxes for commercial crab fishing purposes to be in violation of Fish and Game Code section 8278 *provided* any undersized crabs were returned within a “reasonable time.” Significantly, Warden Chase testified that it was his position that crabs held in a sorting box are not part of the “lot” or “load” for the purpose of section 8278 enforcement.

The DFW’s testimony established further that at the time of the incident (January 2021), there was no written guidance or specific criteria defining what constituted a “reasonable time” to hold crabs in a sorting box during commercial fishing activities. Based on this testimony, the focus at the hearing was whether Mr. Bitts had returned undersized crabs held in his sorting box within a “reasonable time.” And when Mr. Bitts informed the Wardens the crabs in his sorting box had been there for about an hour,³ the focus then became whether an hour was a reasonable time to hold crabs in a sorting box during active crab fishing activities.

Significantly on the issue of what constitutes a “reasonable time,” the Wardens testified that they did not automatically determine that an hour was unreasonable. Rather, the Wardens testified they had to discuss the matter among themselves and that the decision to cite Mr. Bitts came down to a judgment call.⁴ Warden Chase testified that it is common for sorting to **not** occur until after all the traps on a string are

² The burden of proof in an administrative hearing is on the party making the accusations - e.g. the Department. *Hughes v. Bd. of Architectural Examiners* (1998) 17Cal.4th 763, 789, fn. 9.

³ Significantly, Mr. Bitts was very honest and forthcoming with the Wardens. He could have provided them with any time but because he is an ethical crab fisherman, he admitted to holding the crabs in his dump box for about an hour. Mr. Bitts had no previous incidents involving the use of sorting boxes despite having used them for 40 years.

⁴ Eventually, the determination was made by Warden Brassfield who had 2 years’ experience with the DFW.

recovered and emptied during fishing (e.g. Mr. Bitts was actively fishing at the time of the incident).

Ultimately, the Wardens testified that the primary reason for citing Mr. Bitts was that they believed some of the undersized crabs appeared stressed.⁵ However, the Wardens also testified that they were not Dungeness Crab biologists and did not have any specific expertise in crab biology. Warden Hampton took photos of the crabs with his cell phone in part to demonstrate the alleged condition of the crabs; critically however, he failed to preserve the photographs and they were lost when he was later issued a new cell phone by the DFW.

Mr. Bitts and his witnesses (with over 40-years' experience in commercial crab fishing) testified that holding crabs in a sorting box for an hour is not unreasonable or uncommon during active commercial crab fishing activities. They also testified that in their experience, holding crabs in a sorting box for up to an hour does not stress or harm Dungeness crabs. They testified further that the use of sorting boxes is a critical and long-standing practice in the commercial crab fishing industry on the north coast of California.

In sum, the Decision in this matter should be adopted because:

- The DFW failed to provide sufficient evidence that Mr. Bitts had failed to return any undersized crabs to the ocean within a *reasonable time*. In particular, the DFW lost the photos of the crabs in Mr. Bitts' sorting box and failed to submit any other evidence to show that any short crabs were held for an unreasonable time.⁶
- Mr. Bitts and his witnesses, based on their substantial experience, refuted the Wardens' testimony that holding crabs in a sorting box for up to an hour somehow "stresses" crabs. They also provided testimony that in a commercial crab fishing context, holding crabs for up to an hour is not unusual during active periods of fishing and recovering crab traps.
- Warden Chase testified that at the time of the incident, the DFW did not consider crabs held in a sorting box to be part of the lot or load under section 8278 and that sorting typically does not occur until the entire string of traps (up to 100 traps at times) is processed.

⁵ Notably, all the crabs that were determined to be undersized by the DFW were close to being legal sized, which is why they were being sorted. All were successfully returned to ocean.

⁶ DFW's counsel has argued that the decision to cite Mr. Bitts was based on a "variety" of factors and not limited to only the Wardens' judgment that the crabs were somehow stressed. The Wardens did not testify, however, as to what those other alleged factors were - nor did the DFW provide any evidence of any other factors allegedly indicating that an hour was an unreasonable amount of time to hold crabs in a sorting box. The Wardens' written incident reports are void of any such factors.

- The fact that Mr. Bitts conceded under pressure from the Wardens that it was possible he might have been able to sort the crabs in less than an hour does not mean that holding crabs for an hour was unreasonable nor does it mean that the Judge should have not considered other evidence. As noted, the Wardens did not cite Mr. Bitts for holding the crabs for an hour but instead relied on the alleged condition of the crabs, which they could not prove having lost the photos. Officer Chase testified that typically crabs are sorted after active fishing and Mr. Bitts was actively fishing. Mr. Bitts witnesses, with 40 years' experience, testified that holding crabs for sorting up to an hour is not uncommon in the industry. Ultimately, weighing evidence was for the Judge in this matter.⁷
- The DFW deprived Mr. Bitts of his constitutional right to due process when it failed to preserve the potentially exculpatory photos of the crabs the DFW alleged were somehow stressed. *People v. Hitch* (1974) 12 Cal. 3d 641, 649, 652. This alone was enough to dismiss the accusation in this matter given the focus was on the condition of the crabs in Mr. Bitts' sorting box.

The DFW has failed to rebut that the strong presumption under the law that the Judge's findings and decision in this matter are correct.

DFW's Contentions on the Application of Section 8278 in this Matter All Fail

DFW contends that there is "no material dispute" that Mr. Bitts had undersized crabs in his possession in excess of 1% allowed under Section 8278, and therefore, the Decision should be rejected. As discussed above, however, the Wardens testified that DFW's practice at the time of the incident was to allow the use of sorting boxes to hold crabs during fishing activities for a "reasonable time" without being in violation of 8278. The Wardens acknowledged further that following this incident, the DFW issued written guidance in the form of FAQ's essentially adopting this long-standing practice. As also noted, Warden Chase stated it was his understanding that crabs held in a sorting box during commercial crab fishing activities are not part of the "lot" or "load" for the purpose of enforcement of section 8278.

As noted, DFW's allowance of sorting boxes, lack of evidence, and the inconsistency in enforcement is our understanding of why the Humboldt County District Attorney dismissed its case in this matter. There obviously exists a varying understanding regarding the application of law with respect to the use of sorting boxes between the Wardens and their own legal counsel. The use of the "reasonable time" standard without specific written criteria creates an ambiguity as to how and when such a standard would be applied. The DFW's position that section 8278 should be applied

⁷ The trier of fact "is entitled to accept or reject all or any part of the testimony of any witness or to believe and accept a portion of the testimony of a particular witness and disbelieve the remainder of his testimony." *Friddle v. Epstein* (1993) 16 Cal.App.4th 1649, 1659.

strictly (or that 14 CCR Sec. 1.62 somehow applies⁸) is meritless because the Wardens admitted DFW's practice at the time of the incident was to allow the use of sorting boxes to hold short crabs for a reasonable time and that an "hour" was not considered "per se" unreasonable by the DFW.⁹ The law in this matter must be interpreted in favor of Mr. Bitts. *Keeler v. Superior Court* (1970) 2 Cal.3d 619, 631.

The Judge after hearing the facts in the context of the enforcement practices of the DFW as stated by the Wardens, determined the DFW had failed to meet its burden. The DFW is asking the Commission to ignore the DFW's own testimony and enforcement practices.

Conclusion

The Decision should be adopted. The Decision is supported by the evidence – and by the lack of evidence from the DFW.

This matter demonstrates there is a gap in the application and understanding of the present enforcement policies with respect to the use of sorting boxes. Rather than spending additional time and resources on this matter, it appears that the better approach would be for the DFW to work with the commercial crab fishery to draft regulations that protect the resource and clarify enforcement parameters - while also providing specific and achievable guidance for the commercial crab industry (without destroying it).

Thank you for your consideration.

Respectfully submitted,

Matthew Emrick

MATTHEW EMRICK
For Respondent, David Bitts

⁸ 14 CCR Sec. 1.62 was not mentioned in the Accusation nor during the hearing. The DFW's May 11, 2025 letter to the Commission attempts to re-argue its case in hindsight. This section is also contrary to the application of the "reasonable time" criteria in place at the time of the incident as applied by the Wardens in this matter..

⁹ The strict application of Section 8278, would in fact end commercial crab fishing as the terms "Taken" and "Possessed" in the context of undersized crabs are in themselves vague and could be applied to the moment a crab trap is brought onto any boat or when any undersized crabs are placed in a sorting box or even enter a trap still in the ocean.

**BEFORE THE
FISH AND GAME COMMISSION
STATE OF CALIFORNIA**

In the Matter of the First Amended Accusation Against:

CHRISTOPHER MILLER,

Respondent.

Agency Case No. 24ALJ08-FGC

OAH No. 2024090451

PROPOSED DECISION

Erlinda Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 25, 26, and 27, 2025.

Tatiana Filippova, Attorney III, California Department of Fish and Wildlife (Department), represented Nathaniel Arnold (complainant) in his official capacity as the Deputy Director and Chief of the Law Enforcement Division for the Department.

Gary M. Bright, Esq., represented Christopher Miller (respondent), who was present.

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on March 27, 2025.

FACTUAL FINDINGS

Jurisdictional Matters

1. On April 11, 2024, complainant brought the original Accusation in his official capacity. (Exh. 22.) On April 29, 2024, respondent filed a Notice of Defense in which he requested a hearing to permit him to present a defense to the charges in the Accusation. (Exh. 23.) Subsequently, on October 17, 2024, complainant brought the First Amended Accusation in his official capacity. (Exh. 24.) The First Amended Accusation is the operative pleading in this matter.

2. At all relevant times, respondent held a Commercial Fishing License (License) and a Lobster Operator Permit (Permit) issued to him by the Department under Fish and Game Code sections 7852 and 8254, respectively. The Department last renewed respondent's License under number L12136, and his Permit under number LOT046, on March 13, 2024.

Background

3. The commercial take of spiny lobster is a highly regulated limited entry fishery in California. A fixed number of lobster operator permits are issued to qualified licensed commercial fishermen. The term "take" means "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." (Fish & G. Code, § 86.)

4. Commercial fishermen may only take spiny lobster with lobster traps, which are rectangular enclosures constructed with wire mesh. Commercial lobster traps are generally fished in 10 to 200 feet of water and are required to be clearly marked with a buoy attached by a line to the trap. The buoy is the only visible marker of the submerged trap. The buoy must display, in a clearly readable condition, the

permit holder's commercial fishing license identification number followed by the letter "P", which indicates a lobster trap is attached to the other end of the buoy.

5. Additionally, lobster permittees are issued individually numbered trap tags that have a "Lot" number representing their unique lobster operator permit. Permittees are required to attach their trap tags directly to each one of their commercial lobster traps. It is the license number on the buoy and the corresponding trap tag that ultimately identifies the owner of a commercial lobster trap.

6. The commercial lobster fishing season is open from the first Wednesday in October through the first Wednesday after March 15th. (Cal. Code Regs., tit. 14, § 121, subd. (a).) All lobster permittees may have their traps remain in the water for not more than nine days after the close of the season "if the door to such traps are wired open, the trap is unbaited, the buoy remains at the surface of the ocean, and no attempt is made to take lobsters." (Cal. Code Regs., tit. 14, § 122.2, subd. (b).) No lobster trap shall be "abandoned" in the waters of this state. (Cal. Code Regs., tit. 14, § 122.2, subd. (e).) Lobster traps are considered "abandoned" if not retrieved 14 days after the close of the commercial lobster season. (*Ibid.*)

7. The owner and operator of a commercial fishing vessel, or the holder of a commercial fishing license or permit participating in specified fisheries, is required to keep and submit a complete and accurate record of fishing activities (referred to as logbooks). (Cal. Code Regs., tit. 14, § 190, subd. (a).) Logbooks shall be submitted electronically or delivered to the Department "on or before the 10th day of each month following the month to which the records pertain." (Cal. Code Regs., tit. 14, § 190, subd. (d).) The failure to keep and submit required logbooks may result in the revocation or suspension (including non-renewal) of the license or permit for which the records are required. (Cal. Code Regs., tit. 14, § 190, subd. (e).)

2021-2022 Lobster Season

8. Lt. Specialist Joe Johnson testified at the hearing. He is a peace officer. Lt. Johnson testified regarding the Department's investigation of respondent from March to May 2022 and July 2022. Lt. Johnson's testimony was explained and supplemented by the Arrest/Investigation Report he prepared, which summarized the findings of the investigation. (Exh. 1.)

MARCH 25, 2022

9. On March 25, 2022, Lt. Specialist Joe Johnson, Lt. Lengning, and Warden Vargas were on uniformed patrol aboard the Patrol Boat Swordfish, offshore of Santa Cruz Island in Santa Barbara County. The commercial lobster season had closed on March 16, 2022, and March 25th was the last day lobster traps were permitted to remain in the ocean.

10. At approximately 1445 hours on March 25th, Lt. Johnson and Warden Vargas launched a patrol skiff from the Swordfish to contact vessels fishing on the backside of Santa Cruz Island. While on the skiff, Lt. Johnson saw a white buoy close to shore that was marked with the number "L12136P." Lt. Johnson marked the position of the buoy.

11. As the skiff traveled east towards the Yellowbanks area, Lt. Johnson saw at least 12 more white buoys marked with the same number. Lt. Johnson and Warden Vargas pulled up one of the traps to inspect its condition. The trap was wired open; it had a plastic bait canister with bait inside that was deteriorated; and there was one spiny lobster inside the trap. The trap had a green trap tag for "Lot #46" attached. Using the Department's automated licensing and database system, Lt. Johnson determined the L-number on the buoy and the Lot number on the trap tag were both

associated to respondent. Lt. Johnson and Warden Vargas pulled and inspected several more of the traps and found them to be wired open and un-baited. The Swordfish anchored overnight at Smuggler's Cove.

12. The next day, March 26, 2022, when the Swordfish began its patrol, Lt. Johnson saw the white buoys were still in the same area as the previous day. As such, the traps were in violation of California Code of Regulations, title 14, section 122.2, subdivision (b), because they remained in the water more than nine days after the close of the commercial lobster season. March 26th was the tenth day after the lobster season closed on March 16th.

APRIL 2, 2022

13. On April 2, 2022, Lt. Johnson and Warden Coats were on uniformed patrol in a marked patrol vehicle at Santa Barbara Harbor in Santa Barbara County. At approximately 1430 hours, they drove to the public launch ramp and saw a white pickup truck with deteriorated fish receivers in the bed of the truck. The truck was parked close to the water at the far launch ramp. A male was carrying a bucket back-and-forth from the bed of the truck to the water, while another male was in the passenger seat.

14. Lt. Johnson and Warden Coats approached the pickup truck and announced themselves as "Fish and Wildlife." The male with the bucket identified himself as respondent and explained he was collecting saltwater to use for cleaning his gear. During the conversation between Lt. Johnson and respondent, respondent indicated he still had his lobster gear out at Santa Cruz Island. When asked why he had not yet cleaned up his lobster traps, respondent claimed he did not have to because the traps were not fishing. Lt. Johnson explained he had seen several of respondent's

traps at Santa Cruz Island and, although the traps were opened and mostly un-baited, respondent was still required to have all of his traps out of the water by no later than nine days after the season closed. Respondent explained he had been having health problems and had been in and out of the hospital several times.

15. Lt. Johnson asked respondent about his plans for his lobster traps. Respondent stated he planned to convert all of his lobster traps to box crab traps for an experimental box crab fishing permit and continue to fish them. Respondent stated he did not think he would have to fish for box crab in deeper waters. Lt. Johnson explained to respondent his traps were marked with a letter "P" identifying them as lobster traps, and they were considered "abandoned" because they were in the water past 14 days after the close of the commercial lobster season. (Cal. Code Regs., tit. 14, § 122.2, subd. (e).) Lt. Johnson told respondent although he could issue him a citation, he would give him a chance to correct the situation first.

16. Lt. Johnson asked respondent how many lobster traps he still had in the water. Respondent indicated he had about 150 traps at the Northern Channel Islands, primarily around Santa Cruz Island, and another 30 traps just offshore of Santa Barbara Harbor. Respondent stated he was going to purchase his new commercial fishing licenses for the year that day, and start working on converting his traps to experimental box crab traps by the next day, i.e., April 3, 2022. Lt. Johnson told respondent he would not be out on patrol to the Channel Islands for several days and asked respondent if he would have his gear cleaned up or converted to crab traps by April 8, 2022. Respondent confirmed he would take care of his traps by April 8th. Respondent stated he understood how his traps were in violation and thanked Lt. Johnson for not issuing him a citation.

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17. At hearing, Lt. Johnson testified that none of respondent's lobster traps qualified as rock crab traps as they were configured. Lt. Johnson explained lobster traps must have a specified opening, while rock crab traps have a different specified opening at a different location on the trap. (See Fish & G. Code, §§ 9010 (specifications for lobster traps) and 9011 (specifications for crab traps).)

18. Lt. Johnson asked respondent for his contact information in case he needed to speak with respondent in the future. Respondent stated he was between homes and could not provide a definitive place where he would be staying. Respondent also claimed he just got a new cell phone but did not know the phone number. Lt. Johnson gave respondent his business card and asked respondent to call or text him as a sign of good faith once he got his phone charged and working. Respondent agreed. Lt. Johnson took a picture of the California driver's license respondent presented to him.

19. A few days after contacting respondent on April 2, 2022, Lt. Johnson looked up respondent on the Department's automated database system. It showed respondent had purchased his 2022-2023 commercial fishing license and southern rock crab trap permit on April 4, 2022. Lt. Johnson did not receive any phone call or text message from respondent like he agreed to do as a sign of good faith.

MAY 5, 2022

20. Throughout the month of April 2022, the Patrol Board Swordfish was undergoing vessel maintenance and unable to operate. On May 5, 2022, Lt. Johnson spoke by telephone with Officer Lombardi of the Santa Barbara Harbor Patrol. Officer Lombardi indicated respondent had recently been out to the anchorage and had scratched off the letter "P" from his buoys. Lt. Johnson told Officer Lombardi that if

respondent was actively fishing those traps and they were of legal crab trap marking and configuration, there was no statute or regulation that would authorize the seizure of the traps and removing them from the harbor. Lt. Johnson and Officer Lombardi agreed to monitor respondent's fishing activity to determine if he was actively fishing those traps in the Santa Barbara Anchorage.

MAY 13 AND 14, 2022

21. On May 13 and 14, 2022, Department Wardens Coats and Vargas and Lt. Lengning were on patrol aboard the Patrol Boat Swordfish around Santa Cruz Island. During the patrol, they observed and photographed several of respondent's traps and buoys surrounding Santa Cruz Island. They marked 20 separate GPS locations of where they pulled traps or identified respondent's buoys. While most of the traps had been opened, at least one of the traps had been left closed and still baited. It retained several lobsters inside, some of which had been predated on heavily and were missing legs or already eaten. In another trap, a California Sheephead was found dead as it had attempted to prey on the trapped wildlife and was unable to escape.

MAY 20, 2022

22. Between April 5 and May 20, 2022, Lt. Johnson monitored commercial crab landings to see if respondent began fishing his traps for crab like he said he would. Lt. Johnson found no landings reported from respondent in the Department's Marine Landings Database System.

23. On May 20, 2022, at approximately 1600 hours, Lt. Johnson was on patrol with Santa Barbara Harbor Patrol Officer Lombardi at Santa Barbara Harbor. During the patrol, Lt. Johnson and Officer Lombardi pulled and inspected 14 of respondent's traps in the Santa Barbara Anchorage. At least two of the buoys were still marked with the

letter "P", in violation of California Code of Regulations, title 14, section 122.2, subdivision (b). For the traps pulled and inspected by Lt. Johnson, only one trap had an escape ring required specifically for commercial rock crab traps. For the buoys, only one had an "X" to mark it as a rock crab trap; the "X" was scratched on the buoy instead of drawn on it, and was scratched over the previously drawn "P" on the buoy. None of the traps had fresh bait inside. All of the traps inspected still had a lobster trap tag affixed inside the trap.

24. For the 14 traps inspected by Lt. Johnson, he affixed a laminated card to the trap door with a zip tie in a manner preventing the trap from being opened and serviced unless the zip tie was cut. Each card indicated the trap was under investigation by the Department and Lt. Johnson should be called immediately upon servicing of the trap.

MAY 22, 2022

25. On May 22, 2022, at approximately 1230 hours, Lt. Johnson was on uniformed patrol aboard the Patrol Boat Swordfish with Wardens Cohen, Coats, and Vargas, and Lt. Lengning, offshore of Santa Cruz Island in Chinese Harbor in Santa Barbara County. Lt. Johnson observed numerous buoys marked with "12136P", identifying them as respondent's lobster traps. Lt. Johnson pulled and inspected one of the traps, which was still closed and fishing. The leftover bait inside the bait cannister was mostly deteriorated and gone. There were numerous marine wildlife trapped inside. The trap was emptied of its contents and wired open, and the wildlife was returned to the water.

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MAY 25, 2022

26. On May 25, 2022, Lt. Johnson was on uniformed vessel patrol with Santa Barbara Harbor Patrol Officer Lombardi in Santa Barbara Harbor. At approximately 1700 hours, they patrolled the Santa Barbara Harbor Anchorage to inspect respondent's traps.

27. Pursuant to Fish and Game Code section 9004, every trap shall be raised, cleaned, serviced and emptied at intervals, not to exceed 96 hours (i.e., four days), weather conditions at sea permitting, and no trap shall be abandoned in the waters of this state.

28. As of May 25, 2022, 120 hours (i.e., five days) had passed since Lt. Johnson placed the laminated tags on 14 of respondent's traps in the anchorage on May 20th. During that five-day period, Lt. Johnson was not contacted by respondent or any other fishermen indicating they had serviced the traps.

29. Lt. Johnson and Officer Lombardi pulled and inspected 16 traps with buoys marked with respondent's fishing license number "12136." Out of the 16 traps pulled, 11 traps still had the tags Lt. Johnson had affixed to them on May 20th. The three traps that did not have Lt. Johnson's tags still had a zip tie attached in the same manner Lt. Johnson had attached them to ensure the trap could not be serviced without first cutting the zip tie. The other two traps had the letter "P" marked on the buoy.

30. Lt. Johnson seized all 16 of respondent's traps pursuant Fish and Game Code section 9008, which provides that any trap used in violation of the Fish and Game Code or the applicable regulations is a public nuisance and shall be seized. Respondent's traps were placed and photographed on the Santa Barbara Harbor

public launch ramp parking lot. Lt. Johnson had coordinated with a Santa Barbara fisherman who was willing to retrieve the traps and return them to respondent's storage.

JULY 7, 2022

31. On July 7, 2022, Lt. Johnson and Warden Coats were on uniformed patrol in Santa Barbara County. At approximately 1130 hours, they met with respondent at a storage field in Buellton where respondent was reported to have some of his fishing gear stored. Lt. Johnson read respondent his Miranda rights. Respondent indicated he understood his rights and agreed to speak with Lt. Johnson and Warden Coats.

Daily Lobster Logs

32. Prior to the July 7, 2022 meeting with respondent, Lt. Johnson had requested and obtained from the Department a copy of all daily lobster logs submitted by respondent for the 2021-2022 commercial lobster season. The only lobster logs submitted by respondent were for the months of October and November 2021. (Exh. 8.) No lobster logs were submitted by respondent for the months of December 2021 through March 2022.

33. During their conversation on July 7, 2022, Lt. Johnson showed respondent the Department's copies of his lobster logs for October and November 2021, and respondent confirmed they appeared to be consistent with what he submitted. Respondent indicated he was able to fish during December 2021 through March 2022, but he could not remember if he submitted lobster logs for those months. Respondent then indicated he had his lobster logbook and showed it to Lt. Johnson.

34. Lt. Johnson saw respondent's logbook had original unsubmitted pages, marked SL290165 through SL290174, that respondent completed for the months of January and February 2022. (Exh. 9, pp. A174-A183.) Original logbook pages are removed when submitted to the Department, and only a yellow carbon copy of the page remains in the logbook. Respondent's possession of the original logbook pages for January and February 2022, rather than submitting them to the Department, violated California Code of Regulations, title 14, section 190, subdivision (d). Respondent failed to submit his January 2022 lobster logs to the Department by February 10, 2022, and failed to submit his February 2022 lobster logs to the Department by March 10, 2022.

Abandoned Traps

35. During their conversation on July 7, 2022, Lt. Johnson reminded respondent that when they last spoke in April 2022, respondent estimated having 150 traps around Santa Cruz Island and more traps just outside of Santa Barbara. Respondent claimed he was not sure if he got the numbers right but stated, "It's over a hundred." (Exh. 1, p. When Lt. Johnson asked respondent if he had anyone bring in the traps, respondent stated "one guy took it upon himself to help him out." (Exh. 1, p. A8.)

36. Lt. Johnson asked respondent if he still planned to fish his traps for crab. Respondent stated, "I don't see how I can pull it off." (Exh. 1, p. A8.) Respondent indicated he was not opposed to letting other fishermen help get his traps out of the water, adding that "it's only recently that the medication I've been on took hold and now I see how screwed up things really are; and I do need help." (*Ibid.*) Warden Coats created a paper to act as a "permission slip" for respondent to fill in and sign.

Respondent signed the permission slip to allow other fishermen to retrieve his "abandoned" traps. (Exh. 7.)

37. Lt. Johnson asked respondent if he remembered scratching the letter "P" off his buoys at the Santa Barbara Anchorage. Respondent said, "Yea, that was the last time I went fishing." (Exh. 1, p. A8.) Lt. Johnson asked respondent if he ever fished his traps for crab. Respondent responded, "No, I converted them, but it was just a futile attempt to try and, I was flailing. I scraped off the buoys and put in rings and stuff." (*Ibid.*) When asked if he put in rings in all his traps, respondent stated, "No, I started to do it, then I started to get into all this trouble with Harbor Patrol." (*Ibid.*) Respondent indicated he only converted the traps in the anchorage.

38. The Department's investigation determined respondent "abandoned" approximately 156 lobster traps off the coast of Santa Barbara and the Northern Channel Islands, in violation of California Code of Regulations, title 14, section 122.2, subdivision (e). Respondent was able to fish his traps for the entirety of the 2021-2022 commercial lobster season. Respondent was given ample time and opportunity to retrieve his gear and declined to do so, instead allowing others, i.e., gear recovery programs, to clean up his abandoned gear. (Exh. 1, pp. A9-A10.)

39. On July 7, 2022, Lt. Johnson issued a Notice to Appear citation to respondent for violations of California Code of Regulations, title 14, sections 122.2, subdivision (e), abandoning lobster traps, and 190, subdivision (d), failing to submit logs. (Exh. 10.) Respondent signed the citation.

40. On October 2, 2023, in the Superior Court, County of Santa Barbara, case number 23CR03088, respondent was convicted on his plea of no contest to violating California Code of Regulations, title 14, section 190, subdivision (d), failure to submit

logbook to the Department on or before the 10th of each month, a misdemeanor. (Exh. 18.) The charges for abandoning lobster traps in state waters were dismissed pursuant to the plea agreement.

2016-2017 Lobster Season

41. Lt. Todd Van Epps testified at the hearing. He is a peace officer. Lt. Van Epps testified regarding the Department's investigation of respondent in March and April 2017. Lt. Van Epps' testimony was explained and supplemented by the Arrest/Investigation Report he prepared, which summarized the findings of the investigation. (Exh. 11.)

42. The 2016-2017 commercial lobster season closed on March 22, 2017. Under the regulations in effect during the 2016-2017 season, lobster traps were allowed to remain in the water no more than seven days after the close of the season. The regulations were subsequently amended to provide for the current grace period of nine days after the close of the season, as noted in Factual Finding 6, above.

MARCH 2017

43. On March 29, 2017, Lt. Van Epps was on routine patrol aboard the Patrol Boat Swordfish at Santa Cruz Island, specifically Smuggler's Cove. Lt. Van Epps made contact with a commercial lobster vessel and identified respondent as the owner and operator. Respondent stated that he and his deckhand (unidentified) were headed to collect his 40 lobster traps currently in the water. Respondent stated he planned to convert his 40 lobster traps to crab traps and continue to fish in the area. Lt. Van Epps explained to respondent that he needed to make sure all his lobster traps were converted to crab traps by the end of the day (March 29, 2017); otherwise, he would be in violation of the seven-day grace period under California Code of Regulations,

title 14, section 122.2, subdivision (b). Respondent stated he understood and verbally agreed to make sure all of his traps were converted as required by the regulations.

APRIL 2017

44. On April 1, 2017, Lt. Van Epps was operating a patrol skiff in the vicinity of Bowen Point on Santa Cruz Island on an enforcement contact not involving respondent. While operating the skiff, Lt. Van Epps noticed a yellow and red buoy. He approached the buoy and saw it was marked with "L12136P." The letter "P" on the buoy indicated it was for a lobster trap. Lt. Van Epps discovered three other traps in the immediate area with the same buoy configuration. Lt. Van Epps called Warden Lengning, who was operating the Patrol Boat Swordfish, to request his assistance to pull the traps to check their construction as a lobster traps.

45. Lt. Van Epps, and Wardens Lengning, Cohen and Stanton, pulled eight lobster traps with buoys marked with "L12136P." All of the traps were configured as lobster traps. One trap was still actively baited and closed, and contained six lobsters and two whelk. Lt. Van Epps opened the traps and zip tied them in a configuration to minimize the potential take of marine species. Upon returning to shore, Lt. Van Epps looked up license number 12136 and determined the traps belonged to respondent.

46. On April 4, 2017, Lt. Van Epps left a phone message for respondent asking if he had converted his 40 lobster traps to crab traps as he said he would on March 29. On April 5, 2017, Lt. Van Epps was onboard the Patrol Boat Swordfish in the area of Bowen Point on Santa Cruz Island, and was able to easily locate three traps with respondent's license number (L12136P) on them.

47. On April 6, 2017, Lt. Van Epps received a return phone call from respondent. During the call, respondent indicated "I did get to all that gear," referring

to the 40 lobster traps he stated he would convert to crab traps. (Exh. 11, p. A188.) Respondent stated, "I have also been out and re-pulled it," meaning that respondent not only converted the traps but also serviced the traps an additional time since. When Lt. Van Epps asked respondent to clarify the dates when he had done that, respondent went back and forth and was unable to give specific dates, claiming he could not remember. When Lt. Van Epps asked respondent if he pulled his gear the prior day (i.e., April 5th) or before that, respondent indicated it was before that. Lt. Van Epps did not believe respondent because he had been out on April 5th and located three of respondent's illegal lobster traps. When told this, respondent apologized and claimed he was not trying to lie. Respondent stated that, to his knowledge, all of his gear was legal and had been converted to crab. Lt. Van Epps told respondent he needed to go back to the area and rectify all the illegal lobster traps, and then call him to verify he had done so. Respondent "agreed and stated he would make sure it was taken care of ASAP." (*Id.*, at p. A189.)

48. At hearing, Lt. Van Epps noted that, although respondent claimed all of his lobster traps were converted to crab traps, his traps did not meet the specifications for crab traps under Fish and Game Code section 9011. Thus, none of respondent's traps qualified as legal crab traps.

49. On April 11, 2017, respondent contacted Lt. Van Epps and claimed he found four illegal lobster traps and converted them to crab. Respondent also claimed he had converted all his lobster gear on April 1 or 2. Lt. Van Epps explained that respondent's claim did not make sense because Lt. Van Epps had been to the area on April 1 and found respondent's lobster gear. Respondent then changed his story and claimed that "most of his gear" had been converted on April 1 and 2, and since then the remaining gear had been converted. Respondent continued to say, "I have very

little experience with GPS” and “I take full responsibility and I know better.” (Exh. 11, p. A189.) Lt. Van Epps explained to respondent that it appeared as though his fishing practices were extremely poor and he needed to do a better job tracking all of his fishing gear so this situation would not be repeated in the future. Respondent agreed and apologized.

50. On April 12, 2017, at Lt. Van Epp’s request, Department Warden Stanton and National Park Service Ranger Thie, inspected the area around Bowen Point for respondent’s traps. They located an additional trap with respondent’s license number followed by the letter “P”, indicating it was an illegal lobster trap.

51. On April 15, 2017, Department Wardens Lengning, Cohen, and Magleby were on patrol aboard the Patrol Boat Swordfish, in the area of Bowen Point on Santa Cruz Island. There they located six additional traps with respondent’s license number. They pulled each of the six traps and verified the condition of each. Five of the traps were lobster traps, with one of the traps baited and closed and the remaining four traps had the door wired open. The sixth trap was a converted crab trap but had the wrong buoy markings. At Lt. Van Epps’ request, all six traps were seized. Subsequently, Lt. Van Epps left a phone message for respondent requesting a call back. Lt. Van Epps then went on an approved vacation until May 1, 2017.

MAY 2017

52. On May 5, 2017, Lt. Van Epps reached respondent by telephone and asked him to verify that all his gear had, in fact, been converted to date. Respondent stated it was all taken care of and, to his knowledge, there was no other illegal lobster gear in the water. Lt. Van Epps reminded respondent that, when they spoke on April 11, 2017, respondent verified all his gear was in compliance with the regulations. Lt.

Van Epps explained, since that date, the Department found respondent's gear in violation of the regulations on April 12 and April 15. Respondent stated he was sorry and needed to clean up his fishing practices and asked Lt. Van Epps for guidance on how best to do that. Lt. Van Epps told respondent his opinion that respondent was "just dismissing the regulations" and there were many better ways he could account for his traps. In the Arrest/Investigation Report, Lt. Van Epps noted respondent was a long term fisherman with over 20 years' experience, and it seemed improbable that respondent could not locate his traps on multiple occasions as easily as Lt. Van Epps was able to do with his more limited comparable experience locating and pulling traps.

53. Lt. Van Epps informed respondent he would be recommending that the Santa Barbara County District Attorney's Office file criminal charges against him for violating California Code of Regulations, title 14, sections 121, subdivision (a). (Exh. 11, pp. A191-A192.)

54. On December 20, 2017, in the Superior Court, County of Santa Barbara, case number 17CR10035, respondent was convicted on his plea of no contest to one count of violating California Code of Regulations, title 14, section 121, subdivision (a), a misdemeanor. (Exh. 19, p. A261.) Respondent was placed on three years' unsupervised probation under terms and conditions.

2014-2015 Lobster Season

55. Lt. Specialist Trevor Pell testified at the hearing regarding an inspection he conducted of respondent's fishing vessel, the Dolly Dagger, during the 2014-2015 commercial lobster season. Lt. Pell's testimony was explained and supplemented by the Arrest/Investigation Report he prepared that summarized the findings of the inspection. (Exh. 15.)

56. On October 15, 2014, Lt. Pell and Warden Cohen were on patrol at Santa Barbara City Harbor, driving a marked patrol vehicle. At approximately 1800 hours, Lt. Pell observed respondent's fishing vessel, the Dolly Dagger, approach the launch ramp of the harbor. Lt. Pell saw a crew member place receivers that appeared to be full of spiny lobster into the water and tie them onto the side of the vessel.

57. Lt. Pell contacted respondent. Respondent stated he and his crew member had been commercially fishing for lobster and were bringing in the catch to a fish buyer at the harbor. Respondent stated they had gone on a two-day trip out to the Channel Islands and caught 400 pounds of lobster. Respondent and his crew member had current commercial permits for the lobster operation and the ownership of the vessel.

58. Lt. Pell inspected respondent's vessel. The vessel had two live holds with lobster in them, and multiple other receivers on the boat and in the water containing live lobster.

59. Lt. Pell inspected respondent's logbook, which indicated respondent had only taken 122 legal lobsters over his two-day trip. Warden Cohen, based on his training and experience with the commercial lobster fishery, related to Lt. Pell there were many more than 122 lobsters on respondent's boat. Respondent explained he did not fill out his log for October 15, 2014, until he saw Lt. Pell walking toward his boat, which reminded him to do so.

60. Respondent and his crew member unloaded all of the lobster and took them to be weighed. Lt. Pell assisted respondent in separating out 122 lobsters and placing them in crates, with 10 lobsters per crate. After separating out the 122 lobsters, respondent still had approximately 11 crates full of lobster. Respondent's

total catch for his trip was 491.90 pounds of lobster. Lt. Pell saw respondent's lobster logs under reported his catch by approximately 50 percent.

61. After seeing the discrepancy between his logbook and his catch, respondent claimed he must not have put his entire catch on the log and that he "guestimated" his catch numbers for the logbook. Lt. Pell found respondent was cooperative during the entirety of the contact, by providing all of his logs and assisting with organizing his lobster for evidence purposes.

62. In his written report, Lt. Pell indicated he would be filing a formal complaint against respondent for failing to maintain accurate lobster fishing records in violation of former California Code of Regulations, title 14, section 122, subdivision (p), which provided, in pertinent part: ". . . any person who owns and/or operates any vessel used to take lobsters shall complete and submit an accurate record of his/her lobster fishing activities on a form (Daily Lobster Log, DFG 122 (7/96) . . .) provided by the department." (Exh. 24, p. A465.) Former section 122, subdivision (p), has since been amended (to update the form number) and renumbered as section 122, subdivision (e). (*Id.*, at fn. 4.)

63. On October 28, 2014, in the Superior Court, County of Santa Barbara, case number 1471452, a Misdemeanor Complaint was filed against respondent for one count of violating California Code of Regulations, title 14, section 122, subdivision (p) (now subdivision (e)). (Exh. 20, p. A281.) On November 6, 2014, the Misdemeanor Complaint was amended to add one count of violating Fish and Game Code 12002.2, subdivision (a), failure to display a license, an infraction. Respondent was convicted on his plea of no contest to the infraction, and the misdemeanor charge under section 122, subdivision (p), was dismissed as part of a plea agreement. (*Id.*, at p. A283.)

2010-2011 Lobster Season

64. Warden Joshua Crocker testified at the hearing. Warden Crocker is now in his 23rd year as a warden for the Department. He is a Peace Officer. Warden Crocker worked on the Patrol Boat Swordfish from 2007 to 2016.

65. On March 24, 2011, Warden Crocker was on patrol aboard the Patrol Boat Swordfish with Lt. Boyle and Warden Lengning. At approximately 1030 hours, Warden Crocker saw three lobster buoys in the water near Yellow Banks. The buoys were colored silver and black with fisherman's number "L12136P." The three traps were pulled from the water. Warden Crocker found all three traps were baited and closed. Inside the three traps were 22 lobster, three rock crab, five spider crab, and two Kellet's whelk. The end of the commercial lobster season was March 16, 2011.

66. Based on the license number on the traps, Warden Crocker confirmed the three traps belonged to respondent. Warden Crocker seized the three lobster traps and buoys, and released the marine life in the traps back to the water.

67. On March 29, 2011, Warden Crocker spoke by telephone with respondent. During the conversation, respondent stated he had made three recent trips to Yellow Banks and thought he had collected all of his traps. Respondent stated he was fishing 300 traps that season but did not use a chart plotter to locate his traps. Respondent claimed that, after a hernia operation in February, he must have "lost those traps."

68. Warden Crocker issued a Notice to Appear citation for respondent for violating Fish and Game Code section 8251, commercial take of lobster after season, a misdemeanor. (Exh. 17.) Section 8251 provides, in pertinent part: "Spiny lobsters may be taken only between the first Wednesday in October and the first Wednesday after

the 15th of March.” Fish and Game Code section 86 defines “take” to mean “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.”

69. By leaving three lobster traps in the water on March 24, 2011, baited and with the doors closed, respondent “took” lobster after the close of the 2010-2011 commercial lobster season, in violation of California Code of Regulations, title 14, sections 121, subdivision (a), and 122.2, subdivision (b), and Fish and Game Code section 8251.

Respondent’s Testimony and Contentions

70. Respondent testified at the hearing. He is 68 years old and has been a commercial lobster fisherman since 1978. Respondent fishes primarily with traps, but he is also a small scale fisherman, so he crews for other fishermen. Respondent also works in other fisheries as a deck hand. He also builds and sells lobster traps when the lobster season is closed. Respondent currently lives on his boat, the Dolly Dagger, which is docked in a guest slip at Santa Barbara Harbor. Respondent was married for 34 years and is recently divorced.

2021-2022 LOBSTER SEASON

71. At hearing, respondent testified that, as the 2021-2022 lobster season was ending, he went out to his traps and wired the doors open as required by law. Respondent explained he did not retrieve his lobster traps at the end of the 2021-2022 lobster season because he was having medical issues in March 2022. Respondent testified he had a series of infections from an enlarged prostate, bladder issues, depression, and his weight decreased to 127 pounds from his normal weight of 150 pounds. Respondent claimed he was hospitalized three or four times in March 2022 because the doctors did not fully understand his condition. Respondent testified that,

due to his medical condition, he hired another fisherman, Steve Escobar (Escobar), to retrieve his lobster traps from Santa Cruz Island. Respondent testified Escobar went out but found only three of respondent's traps in the area.

72. Respondent presented a declaration he filed in the criminal proceeding for his October 2, 2023 conviction. (Exh. B.) In the declaration, respondent admitted, "I was definitely late in removing my lobster traps for the 2020-2021 season; however, the delay was the result of my medical problems and not purposeful." (*Id.*, at p. B217.) In the declaration, respondent identified his "debilitating health conditions, which prevented [his] ability to pull [his] traps or assist in their retrieval" as "a urinary tract infection, a blood infection, and an enlarged prostate gland[.]" (*Id.*, at p. B216.)

73. At hearing, respondent presented medical records for his treatment in April, May and June 2022. (Exh. A.) However, none of the records reflect respondent's health condition, or any medical treatment received, in the month of March 2022. Thus, the medical records fail to support respondent's claim that he suffered medical conditions in March 2022 that prevented him from timely retrieving his lobster traps.

74. Respondent's medical records include indications of possible psychiatric and mental health issues, as well as substance abuse issues. For example, a medical record for May 1, 2022, includes a report by respondent's mother that respondent has a history of polysubstance use, intermittently goes to the Bridge's Clinic, and has had psychiatric issues in the past. (Exh. B, p. B89.) This record also indicates respondent has "an unclear past psychiatric history (previously diagnosed with bipolar disorder) but with known history of polysubstance abuse (including daily methamphetamine use)[.]" (*Id.*, at p. B97.) This medical record also describes difficulties with obtaining respondent's medical history from him. The record notes: "The patient's thought process is tangential and at times disorganized. He is unable to provide relevant or

coherent history." (*Ibid.*) The record also notes respondent "had to be repeatedly redirected to answer most questions." (*Ibid.*)

2016-2017 LOBSTER SEASON

75. On direct examination, respondent was asked about the allegation in the Accusation that he left 17 traps in the water for more than nine days after the close of the 2016-2017 lobster season. Respondent testified he was in the process of converting the 17 lobster traps to crab traps. Respondent testified he hired Escobar to retrieve his traps, but there were some left in the water. Respondent testified no administrative action was taken against his license or permit.

2014-2015 LOBSTER SEASON

76. On direct examination, respondent was asked about his November 6, 2014 criminal conviction for failure to display a license, in violation Fish and Game Code section 12002.2. Respondent explained he was on another boat that was hauling his traps, and he did not have his license displayed on that boat, which was required. Respondent testified he pleaded guilty to the infraction. Respondent testified no action was taken against his license or permit for that infraction.

2010-2011 LOBSTER SEASON

77. On direct examination, respondent was asked about his three traps left in the water after the 2010-2011 lobster season closed. Respondent testified the Park Service found three of his traps in the Chinese Anchorage. The Park Service seized the traps and offered to give them back, but respondent was unable to retrieve his traps from the Park Service because he was out fishing. Respondent testified his three traps were left in the water after the season closed because "I probably missed them."

Respondent testified no action was taken against his license or permit for this violation.

LEGAL CONCLUSIONS

Legal Principles

1. Pursuant to Fish and Game Code section 7857, subdivision (b)(2), the Commission may suspend, revoke, or cancel commercial fishing privileges for a period of time determined by the Commission for "[a] violation of this code, the terms of the permit or other entitlement, or the regulations adopted pursuant thereto, by the licensee, permittee, person holding the entitlement, or his or her agent, servant, employee, or person acting under the licensee's, permittee's, or entitled person's direction or control."

2. Relying on Fish and Game Code section 7857, subdivision (b)(2), complainant requests that the Commission permanently revoke respondent's License and Permit based on the 10 causes for discipline alleged in the First Amended Accusation. As the party seeking relief, complainant bears the burden of proving the alleged causes for discipline by a preponderance of the evidence. (Evid. Code, §§ 115, 500.) "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324-325.)

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Causes for Discipline

FIRST CAUSE

3. Cause exists, pursuant to Fish and Game Code section 7857, subdivision (b)(2), to discipline respondent's License and Permit for violating California Code of Regulations, title 14, section 122.2, subdivision (b), in that respondent left lobster traps in the water more than nine days after the 2021-2022 commercial lobster season closed on March 16, 2022, based on Factual Findings 9-30.

SECOND CAUSE

4. Cause exists, pursuant to Fish and Game Code section 7857, subdivision (b)(2), to discipline respondent's License and Permit for violating California Code of Regulations, title 14, section 122.2, subdivision (e), in that respondent left 156 traps abandoned in the waters of the state of California, by not retrieving them 14 days after the close of the 2021-2022 commercial lobster season, based on Factual Findings 35-39.

THIRD CAUSE

5. Cause exists, pursuant to Fish and Game Code section 7857, subdivision (b)(2), to discipline respondent's License and Permit for violating California Code of Regulations, title 14, section 121, in that respondent took lobsters after the 2021-2022 commercial lobster season closed on March 16, 2022, based on Factual Findings 9-30.

FOURTH CAUSE

6. Cause exists, pursuant to Fish and Game Code section 7857, subdivision (b)(2), to discipline respondent's License and Permit for violating California Code of

Regulations, title 14, section 190, subdivision (d), in that, from December 1, 2021, until March 31, 2022, respondent failed to submit lobster logbooks (numbers SL290165 to SL290174) on or before the 10th day of the month following the month to which the records pertained, based on Factual Findings 32-34.

FIFTH CAUSE

7. Cause exists, pursuant to Fish and Game Code section 7857, subdivision (b)(2), to discipline respondent's License and Permit for violating California Code of Regulations, title 14, section 122.2, subdivision (b), in that respondent left 17 traps identified as lobster traps in the water more than nine days after the 2016-2017 commercial lobster season closed on March 22, 2017, based on Factual Findings 41-54.

SIXTH CAUSE

8. Cause exists, pursuant to Fish and Game Code section 7857, subdivision (b)(2), to discipline respondent's License and Permit for violating California Code of Regulations, title 14, section 122.2, subdivision (e), in that respondent left nine traps abandoned in the waters of the state of California, by not retrieving them 14 days after the close of the 2016-2017 commercial lobster season, based on Factual Findings 41-54.

SEVENTH CAUSE

9. Cause exists, pursuant to Fish and Game Code section 7857, subdivision (b)(2), to discipline respondent's License and Permit for violating California Code of Regulations, title 14, section 121, in that respondent took lobsters after the 2016-2017 commercial lobster season closed on March 22, 2017, based on Factual Findings 41-54.

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EIGHTH CAUSE

10. Cause exists, pursuant to Fish and Game Code section 7857, subdivision (b)(2), to discipline respondent's License and Permit for violating California Code of Regulations, title 14, section 122, subdivision (p) (now subdivision (e)), in that, on October 14, 2014, respondent failed to complete and submit an accurate record of his lobster fishing activities on a form provided by the Department by under reporting the number of lobsters he retained by approximately 50 percent, based on Factual Findings 55-63.

NINTH CAUSE

11. Cause exists, pursuant to Fish and Game Code section 7857, subdivision (b)(2), to discipline respondent's License and Permit for violating California Code of Regulations, title 14, section 122.2, subdivision (b), in that respondent left three baited and closed traps in the water eight days after the 2010-2011 commercial lobster season closed on March 16, 2011, based on Factual Findings 64-69.

TENTH CAUSE

12. Cause exists, pursuant to Fish and Game Code section 7857, subdivision (b)(2), to discipline respondent's License and Permit for violating California Code of Regulations, title 14, section 121, in that respondent took lobsters after the 2010-2011 commercial lobster season closed on March 16, 2011, based on Factual Findings 64-69.

Level of Discipline

13. Neither the Department nor the Commission has developed guidelines regarding the level of discipline to impose for misconduct by a commercial fisherman. But Fish and Game Code section 12154, which concerns appeals of suspended or

revoked hunting or sport fishing licenses, describes factors that are useful in determining the appropriate discipline in this case. The factors the Commission considers in such appeals include the nature, circumstances, extent, and gravity of the violations, the person's culpability for the violations, and the injury to natural resources caused by the violations. (Fish & G. Code, § 12154, subd. (b)(1).)

14. The primary purpose of administrative license proceedings is to protect the public, and the object of discipline is not to punish the licensee. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817; see also *Pirouzian v. Superior Court* (2016) 1 Cal.App.5th 438, 448-450.) Consideration of the factors described in Fish and Game Code section 12154 in this case is reasonable to evaluate public protection, specifically the protection of the public's natural resources.

15. The preponderance of the evidence supports the permanent revocation of respondent's License and Permit to ensure public protection. Over the course of two lobster seasons, in 2021-2022 and 2016-2017, respondent demonstrated a pattern of violating the regulations requiring traps to be removed from the water not more than nine days after the close of the lobster season; prohibiting traps from being "abandoned" in state waters; and allowing lobsters to be taken only during the designated lobster season. Respondent's violation of these regulations during the 2016-2017 lobster season was not mitigated by the passage of time because he committed the same violations more recently in the 2021-2022 lobster season. "The evidentiary significance of . . . misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. [Citations.]" (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

16. Further, the evidentiary significance of respondent's violation of two of these regulations during the 2010-2011 lobster season, specifically, the regulations

prohibiting traps remaining in the water more than nine days after the close of the lobster season, and taking lobsters outside of the designated lobster season, was not mitigated by the passage of time, in light of his more recent violations in the 2016-2017 and 2021-2022 lobster seasons.

17. Apart from the passage of time, respondent presented almost no other evidence of rehabilitation. He testified himself but called no other witnesses to describe his rehabilitation efforts, current commercial fishing practices, or present character. He downplayed his culpability for the violations during the 2021-2022 lobster season by claiming they were due to his debilitating medical conditions in March 2022. However, the medical records he presented were primarily for April and May 2022 and do not reflect his condition in March 2022. It is noted that, on April 2, 2022, respondent was at the public launch ramp at Santa Barbara Harbor, going back-and-forth collecting water in a bucket to wash the gear in the bed of his pickup truck. He communicated with Lt. Johnson and agreed to have his gear cleaned up or converted to crab traps by April 8th. Respondent's claim that his medical condition prevented him from removing his traps from the water at the end of the 2021-2022 lobster season was not persuasive nor supported by sufficient evidence.

18. Respondent's testimony at hearing regarding the violations in the 2016-2017, 2014-2015, and 2010-2011 lobster seasons did not establish justification for or rehabilitation from the violations. Respondent repeatedly told the Department's wardens he was converting his lobster traps to crab traps, and he would do so in short order. The wardens gave respondent every opportunity to comply with the regulations, yet he failed to do so. He has shown an inability or unwillingness to comply with applicable laws and regulations or directives of Department wardens. The permanent revocation of his License and Permit is appropriate to ensure public protection.

Respondent has not demonstrated he can be trusted to operate as a lobster fisherman in compliance with applicable laws and regulations. Respondent's failure to operate his lobster traps in compliance with laws and regulations creates a hazard for people, marine life, and the marine environment. Revocation of respondent's License and Permit is necessary and warranted to protect public resources.

ORDER

Respondent Christopher Miller's Commercial Fishing License and Lobster Operator Permit are revoked.

DATE: **04/25/2025**

Erlinda Shrenger
Erlinda Shrenger (Apr 25, 2025 16:16 PDT)

ERLINDA SHRENGER

Administrative Law Judge

Office of Administrative Hearings